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The Quedlinburg Treasures: Would Anything Be Different Now?

Guelph Treasure;
Hobby Lobby;
***Adam* & *Eve* Redux;**
Resale Royalties;
and more ...

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COVER: *Armband* (Scythian, 900-100 BC). Gold and glass.
Loaned to the Allard Pierson Museum. Photo: AP Museum. See story on p. 36.

GULF OVER GUELPH

DISPUTE OVER "GUELPH TREASURE" CONTINUES AS COURT STAYS CASE PENDING OUTCOME OF APPEAL

FIGURE 1. ***Dome Reliquary*** **(Cologne, late 12th century). © Kunstgewerbemuseum, Staatliche Museen zu Berlin. Photo: Achim Kleuker.**

FIGURE 2. ***Reliquary Bust of St. Blasius*** **from the Guelph Treasure (Brunswick, mid-14th century). © Kunstgewerbemuseum, Staatliche Museen zu Berlin. Photo: Karen Bartsch.**

As one of the most prodigious art looters of the Nazi era, *Reichsmarschall* Hermann Goering's name has appeared in many Holocaust restitution cases in the U.S. and abroad. In contrast, it is rare to find a case in which the artwork at issue has a direct link, however tenuous, to Adolf Hitler himself. One such case, however, *Philipp v. Germany,*[1] is currently before the U.S. Court of Appeals for the District of Columbia. The case pits the German government against the heirs of a group of German-Jewish art dealers in an ownership dispute over the so-called "Guelph Treasure" or "*Welfenschatz,*" a collection of Medieval Christian relics made of precious metals, purportedly valued at $250 million.

In May 2017, D.C. District Court Judge Colleen Kollar-Kotelly stayed the case, pending the outcome of a German government appeal, on U.S. Foreign sovereign immunity grounds, of her own March 2017 decision denying Germany's motion to dismiss the case. In the March holding, Kollar-Kotelly ruled that the U.S. Foreign Sovereign Immunity Act (FSIA) did not protect Germany from the suit brought by heirs of the art dealers because their claims fell within the FSIA's "expropriation exception," which grants U.S. courts jurisdiction over cases involving a foreign nation's taking of property in violation of international law. However, after Germany appealed her decision, the Judge stayed the case pending the appellate court's ruling, holding that it would be "inequitable" to require Germany to proceed with the case in the lower court because, if its appeal was granted, the case would be dismissed altogether, and Germany's lower court actions would have been needless.

THE TREASURE

The objects at the center of this dispute, the "Guelph Treasure," were captured by the Allies during World War II and returned to their purported owner, the German state, after the war. Germany's ownership claim to the Treasure is based on its status as successor in interest to the State of Prussia – although the Treasure's previous possessor was actually Hitler, who had been given the Treasure as a gift from the ubiquitous Hermann Goering in 1935.

1 *Philipp v. Germany,* No. 15-cv-00266 (D.D.C. Mar. 31, 2017)

For centuries, the Guelph Treasure **(FIGS. 1 & 2)** belonged to the Dukes of Brunswick-Lüneburg, members of the House of Guelph for whom the Treasure was named. In 1929, the entire collection, consisting of 82 objects, was jointly purchased for 7.5 million Reichsmarks ("RM") by three Jewish-owned art dealing firms based in Frankfurt (J. & S. Goldschmidt, I. Rosenbaum, and Z.M. Hackenbroch, collectively known as the "Consortium"), who agreed to re-sell the works and share the profits with Duke Ernest Augustus III of Brunswick-Lüneburg, son-in-law of the deposed Kaiser.

To that end, throughout 1930 and 1931 the Consortium exhibited the Guelph Treasure to promote its sale. At the first exhibitions, held in Frankfurt and Berlin, 18 of the works were sold for a total of more than 1.1 million RM (at least 8 of the works were purchased by German collectors and museums). The Treasure was then sent on a tour of the U.S., where another 22 works were purchased for more than 1.6 million RM, for a combined total of 2.7 million RM. (The Cleveland Museum of Art was the single biggest purchaser at the 1930-1931 sales, by far, spending 2.4 million RM to acquire 9 objects.) The exact sales total of the U.S. and German sales is unknown, however, and was likely much greater than 2.7 million RM, as the sales prices of fully 16 of the 40 sold works are unknown. It is also noteworthy that both parties to the suit agree that the 42 unsold objects from the Guelph Treasure were the most valuable, amounting to at least two-thirds of the Treasure's original value.

Almost from the moment the Nazis came to power in 1933, they sought to "recover" the remaining 42 objects of the Guelph Treasure. One of the leaders of this effort was Hermann Goering, then-governor of Prussia, the German state in which the members of the Consortium and the Treasure itself were located. Over the next two years, the Prussian Government negotiated with the Consortium for the purchase of the Treasure. During this time, the Consortium's members nearly went bankrupt due to Nazi boycotts of Jewish-owned businesses. In addition, according to the plaintiffs, Prussia discouraged two potential buyers, including a museum in Hannover, from attempting to purchase the works, ensuring that Prussia would be the sole bidder. With no alternatives, in June 1935, the Consortium sold the Guelph Treasure to the State of Prussia for 4.25 million Reichsmarks.

Prussia withheld 780,000 RM of the payment price, asking the Consortium to accept several works of art with little value in its place. The remaining 3.4 million RM payment was deposited in the bank account of Zacharias Hackenbroch, owner of one of the three art firms that made up the Consortium; most of the money was used to repay creditors. The owners of the Rosenbaum and Goldschmidt art firms fled Germany in 1935 and 1936, respectively. Hackenbroch died in Germany in 1937, possibly at the hands of the Nazis, who subsequently froze his bank accounts, which included the remaining proceeds of the 1935 sale; his wife and daughter fled the following year. All of them were required to pay so-called flight taxes of between 47,000 and 70,000 RM for the right to leave Germany.

"In May 2017, D.C. District Court Judge Colleen Kollar-Kotelly stayed the case, pending the outcome of a German government appeal … of her March 2017 decision denying Germany's motion to dismiss …"

THE CLAIM

In 2008, Alan Philipp, the British grandson of Hackenbroch, and Gerald Stiebel, the American great nephew of Rosenbaum, contacted the Prussian Cultural Heritage Foundation (Stiftung Preussischer Kulturbesitz or "SPK") seeking the

restitution of the Guelph Treasure. The parties subsequently brought the dispute to the German Advisory Commission for the Return of Cultural Property Seized as a Result of Nazi Persecution, Especially Jewish Property, better known as the Limbach Commission, a mediation panel created in 2003 to issue *non-binding* recommendations on restitution to German museums.

In March 2014, the Commission rejected the heirs' restitution claim, ruling that the transaction was not a forced sale, as Prussia had paid what the Commission deemed a "fair-market price" for the works, given the economic situation at the time (the Great Depression) and the fact that the dealers had been trying, unsuccessfully, to sell the works for several years.

Following the Limbach Commission's ruling, in February 2015, Philipp and Stiebel (later joined by Jed Leiber, another American great nephew of Rosenbaum) sued Germany and the SPK in federal court in Washington, D.C. seeking the return of the Treasure on the grounds that the transaction with Germany constituted a forced sale. The complaint set out ten claims against Germany, five based on the taking of the Treasure itself, including replevin and conversion, and five "non-property based" claims such as breach of fiduciary duty and tortious interference.

CAN THE CASE BE HEARD IN THE U.S.?

The heirs asserted that the U.S. had jurisdiction to hear the case under the expropriation exception to the FSIA because, under international law, "any sale of property by a Jew in Nazi Germany … carries a presumption of duress" and thus constitutes a forced sale.

In March 2016, Germany filed a motion to dismiss the complaint on a number of grounds, including foreign sovereign immunity and the expiration of the statute of limitations. Germany was forced to withdraw the latter argument after the December 2016 passage of the U.S. Holocaust Expropriated Art Recovery Act ("HEAR Act"), which established a uniform federal statute of limitations period of six years for Holocaust-era claims running from the time a claimant discovers a disputed work and knows he/she has a potential ownership interest.[2]

Germany maintained its other arguments; asserting that the expropriation exception only applies in cases involving a state's seizure of property belonging to foreign nationals, while the Guelph Treasure had been acquired from German nationals.

In March 2017, the D.C. District Court denied Germany's motion to dismiss the case, asserting that the heirs' five property-based claims satisfied the expropriation exception because a country's seizure of property from its own nationals is a violation of international law when it occurs as part of a policy of "genocide" and the sale of the Guelph Treasure bore a "sufficient connection to [the Nazi] genocide" to "amount to a taking in violation of international law." (The court did dismiss the five non-property-based claims, as they did not fall within the exception.)

Although its decision was based on the FSIA exception, the court stated that it would have rejected Germany's three other defenses as well: that the heirs' claim was against U.S. foreign policy; that the principle of comity required the heirs to exhaust all legal remedies in Germany before filing suit in the U.S.; and that based on the doctrine of *forum non conveniens,* Germany was the proper venue for the case.

Germany responded to the court's decision by filing an interlocutory appeal (an appeal of a ruling, during an ongoing trial) with the U.S. Court of Appeals for the District of Columbia (D.C. Circuit Court)

2 For a detailed discussion of the HEAR Act, see *IFAR Journal,* Vol. 17, nos. 2 & 3 (2016).

in April 2017, seeking to overturn the district court's ruling and dismiss the case. Although most court rulings are not subject to interlocutory appeals, one of the exceptions is a ruling that rejects a nation's claim of sovereign immunity.

In addition to its interlocutory appeal to the D.C. Circuit Court, Germany filed two motions with the D.C. District Court in April 2017, requesting that the court: 1) "certify" its March 2017 decision "in its entirety," which would permit Germany to raise all of the arguments the lower court had rejected – not only the FSIA – in its interlocutory appeal; and 2) stay the case pending the outcome of the appeal.

As previously noted, in May 2017, the D.C. District Court granted both of Germany's motions. The court allowed Germany to make all of its arguments (including those unrelated to the FSIA) at the interlocutory proceeding, on the grounds that doing so would speed up the trial, as Germany would inevitably raise the same claims anyway in an appeal of the court's final decision.

The District Court also granted Germany's motion to stay the case pending the outcome of the interlocutory appeal because the issue being appealed was whether the District Court had jurisdiction to hear the case *at all*. Furthermore, the court stated, it would be "inequitable" to require Germany to file an answer to the heirs' complaint and begin the discovery process before the issue of whether the court could even hear the case was resolved.

—Nicholas Dietz
Legal Research Associate, IFAR

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ADAM AND *EVE* STILL IN LIMBO

BRIEFS FILED IN THIRD APPEAL TO NINTH CIRCUIT OVER CRANACH DIPTYCH

When last we left the decade-long ownership dispute between Marei von Saher (sole heir of Dutch-Jewish art dealer Jacques Goudstikker) and California's Norton Simon Museum over a Goudstikker-owned Lucas Cranach diptych of *Adam* and *Eve* acquired by Hermann Goering during World War II, a California federal district court ruled that the Norton Simon had good title to the works.[1] In its August 2016 decision, the court held that because post-WWII Dutch legislation required parties to file restitution claims no later than 1951 and the Goudstikker heirs had failed to do so, legal title to the Cranachs passed to the Dutch Government and eventually to the Norton Simon, which purchased the works in 1970 and 1971.[2]

The August 2016 decision marked the third time that the District Court for the Central District of California ruled against von Saher in the case and, with the filing of an appellate brief in March 2017, the third time von Saher has appealed the decision to the Ninth Circuit, which reversed the lower court's rulings on the two previous occasions.

While both parties agree that the Cranachs were acquired by Goering through a forced sale in 1940, recovered by the Allies and then returned to The Netherlands after the war to be restituted to their rightful owners, the parties' appellate filings paint sharply dif-

1 *Von Saher v. Norton Simon Museum of Art*, No. 07-cv-2866 (C.D. Cal. Aug. 9, 2016).

2 The 2016 ruling was discussed at length in an article by Thomas R. Kline in *IFAR Journal*, Vol. 17, nos. 2 & 3 (2016). The case as a whole has been covered extensively in the *IFAR Journal* since it began.

"... with the filing of an appellate brief in March 2017, [this is] the third time von Saher has appealed the decision to the Ninth Circuit, which reversed the lower court's rulings on the two previous occasions."

ferent pictures regarding how and why Désirée von Saher ("Desi"), the widow of Goudstikker and mother-in-law of Marei von Saher, failed to submit a claim for the works prior to the 1951 deadline. Von Saher contends that Desi refused to file a claim because she was involved in negotiations with the Dutch Government, which ultimately led to a 1952 agreement that resolved her claims to some of Goudstikker's property, but not his art collection. In contrast, the Norton Simon contends in its June 2017 reply (and prior filings), that, in her negotiations with the Dutch Government, Desi filed restitution claims only for specific "cherry-picked" items and *intentionally* omitted all the artwork looted by Goering, including the Cranachs, because the amount of money she had received from the forced sale of those artworks (which she would have had to return) was greater than the value of the works themselves in the early 1950's. The Norton Simon supports its assertions with internal documents written by Desi's financial and legal advisors at the time.

Although these conflicting narratives are not insignificant, the primary focus of von Saher's appellate brief is elsewhere – namely, the substantial policy changes regarding Holocaust-looted art that have occurred around the world in recent years, whereas the Norton Simon focuses more on legislation and judicial precedent.

Nowhere is this distinction more evident than in the parties' discussions of the Dutch Government's decision in 2006 to return to von Saher 200 works of art in Dutch museums that had been in the Goudstikker collection and were acquired by Goering. While von Saher takes this as precedent for establishing the legitimacy of her claim to the Cranachs, the Norton Simon stresses that The Netherlands' decision to return the works was made by Government Ministers, not the courts, with the Dutch Government itself stating that the decision was based "more on policy than strict legality." Norton Simon adds that, in either event, the decision would have no bearing on the instant case because, unlike the works restituted in 2006, the Cranachs are in the possession of a third party, not the Dutch Government.

Continuing the policy theme of her argument, von Saher's brief discusses America's own current policy on Holocaust restitution, noting that the U.S. is a party to the 1998 Washington Principles and 2009 Terezin Declaration, whose signatories agreed to make every effort to remedy the consequences of Nazi-era looting. In addition, the U.S. enacted the HEAR Act in December 2016, whose stated policy goal is to give claimants a "fair opportunity" to recover artwork. Norton Simon reiterates that policy decisions are not legally binding, and even if they were, the actions of the Dutch Government are protected from judicial review by U.S. courts under the Act of State doctrine.

If one thought that the basic parameters of this case had been well-established over the past decade, von Saher upends that notion in the final section of her appellate brief. In a bold gambit, deemed "meritless" by the Norton Simon, von Saher requests that the Ninth Circuit assign the case to a new judge. Noting that the Ninth Circuit has already overturned District Judge John Walter's previous two decisions in the case, von Saher argues that a new judge is necessary because Walter has shown himself unable to put aside his "strongly held views...even after they [were] determined to be erroneous."

If nothing else, this latest twist in the von Saher–Norton Simon case is sure to make the Ninth Circuit's upcoming decision a more interesting read.

—**N.D.** and **Sharon Flescher**
Executive Director, IFAR

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In Brief—

LIBYA REQUESTS U.S. IMPORT PROTECTIONS

On June 16, 2017, the government of war-torn Libya formally requested a Memorandum of Understanding (MOU) with the U.S. in an effort to protect Libya's cultural heritage from looting. Under the 1983 U.S. Cultural Property Implementation Act (CPIA), the U.S. established procedures for countries to request assistance in combating the looting of cultural property by restricting the entry of designated types of objects into the U.S. Currently, there are MOUs with 16 countries under the CPIA.

As *IFAR Journal* went to press, the Cultural Property Advisory Committee, which advises the President on such matters, met on July 19 and 20 to discuss Libya's request. If approved, Libya would become the second Middle Eastern country to sign a MOU with the U.S., following closely on the heels of its neighbor Egypt.

RULING IN HERZOG CASE

Also shortly before IFAR went to press, the U.S. Court of Appeals for the District of Columbia issued a ruling in a complicated case IFAR has been following: *De Csepel v. Hungary.* (See *IFAR Journal*, Vol. 12, no. 4 and Vol. 14, nos. 1 & 2.) The case, originally filed in 2010, is an effort by the heirs of Hungarian-Jewish art collector Baron Mor Herzog to recover works from his vast Old Master collection, which was looted by the Nazis and their Hungarian allies and is currently held by three Hungarian museums and a university.

The D.C. Circuit's ruling, largely affirming a 2016 district court decision, allows Herzog's American-born great-grandson David de Csepel to continue his pursuit of 40 works of art, valued at approximately $100 million.

Hungary sought to have the case dismissed on the grounds that the U.S. Foreign Sovereign Immunities Act (FSIA) protects foreign governments from suit by U.S. citizens. The D.C. Circuit rejected Hungary's argument, ruling that the "expropriation exception" to the FSIA indeed allows governments to be sued for claims of alleged looting during the Holocaust, but that the Hungarian government or its agencies lacked the required commercial contacts with the U.S. for the exception to apply. Therefore, it *was* protected by the FSIA. The three state-run Hungarian museums and the state university, however, *did* have the necessary commercial contacts, so the case was remanded back to the district court.

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PISSARRO CLAIM GETS NEW LIFE

In still another ruling at press time in a long-running case, the U.S. Court of Appeals for the Ninth Circuit overturned a lower court's decision in the claim against the Thyssen-Bornemisza Museum in Madrid. The case involves a Camille Pissarro painting acquired by the Nazis in a forced sale from German-Jewish art collector Lilly Cassirer in 1939. The painting, showing a Paris street scene, was subsequently purchased by Baron Hans Thyssen-Bornemisza and then by the Spanish government, when it bought the Baron's collection in 1993 and established the museum.

The Ninth Circuit ruled that Cassirer's heirs could continue their claim because they had demonstrated there was a "triable issue of fact" as to whether the museum knew the painting was stolen when it purchased it from the Baron. Even under Spanish law, which both the lower court and the circuit court agree apply, the museum's legal title to the work will be determined by whether it was acquired in "good faith." The Ninth Circuit remanded the case to the district court in California that had dismissed it in 2015. Coincidentally, District Judge John F. Walter, who dismissed the case, is the same judge presiding in the case against the Norton Simon Museum.

DESPITE LONG ODDS, ARTISTS CONTINUE FIGHT TO PRESERVE CALIFORNIA RESALE ROYALTY ACT

In what may be the last gasp for the California Resale Royalty Act (CRRA)[1], a 1977 law which grants a 5% royalty to living artists each time one of their works is re-sold, the Ninth Circuit will soon hear a second appeal in *Estate of Robert Graham v. Sotheby's.*[2]

This consolidated case pits a group of artists and their successors in interest (Chuck Close, Laddie John Dill, the Estate of Robert Graham, and the Sam Francis Foundation) against arguably the world's three biggest re-sellers of artwork (Sotheby's, Christie's, and eBay), who are accused of violating the CRRA by failing to pay the required resale royalties.

"The remaining plaintiffs, artists Chuck Close and Laddie John Dill, and the Sam Francis Foundation, appealed the district court's decision in March 2017."

In its first decision in the case, an *en banc* ruling in May 2015, the U.S. Court of Appeals for the Ninth Circuit partially overturned a 2012 decision by the Federal District Court for the Central District of California, which ruled that the CRRA was an unconstitutional violation of the Commerce Clause. The upcoming appeal, however, will be determined under the federal Copyright Act.

As originally written, the CRRA applied to all artwork sold in the State of California *or* by a California resident (regardless of where the sale took place). In its 2012 decision, the district court ruled that applying the CRRA to transactions that occurred outside of California placed an undue burden on interstate commerce, making the law unconstitutional under the Commerce Clause. Although the Ninth Circuit agreed for the most part, it held that the CCRA might be constitutional with regard to re-sales that took place solely within California and remanded the case to the district court to rule on this issue.[3]

On remand, the defendants presented a new argument, asserting that the CRRA was preempted by the "first sale doctrine" of the 1976 Copyright Act[4], which, they argued, prevents a copyright holder (in this case, the artists) from interfering with the re-sale of his copyrighted work.

In an April 2016 decision, the district court agreed, and struck down the CRRA once again, this time on copyright grounds. The Court also ruled that even if it had been valid, the CRRA would not apply to eBay because the law was aimed at "sellers of fine art or their agents" and eBay did not fall into either category.

In addition, the court dismissed the Estate of Robert Graham, which ironically is the named plaintiff in the suit, on the grounds that an estate has no standing to sue; it must have an actual representative, such as an executor, appear in court on its behalf. After initially joining with the other plaintiffs in an August 2016 notice of appeal, the Estate withdrew from the case altogether in March 2017.

The remaining plaintiffs, artists Chuck Close and Laddie John Dill, and the Sam Francis Foundation, appealed the district court's decision in March 2017. In a joint appellate brief, they argue that the district court should have followed the ruling in *Morseburg v. Baylon*[5], a 1980

1 Cal. Civil Code § 986.

2 *Estate of Robert Graham v. Sotheby's,* No. 11-cv-08604 (C.D. Cal. Apr. 11, 2016).

3 See prior discussions of this case in *IFAR Journal,* Vol. 16, nos. 4 and 1 & 2, Vol. 15, nos. 3 & 4, and other issues.

4 17 U.S.C. 109.

5 *Morseburg v. Balyon,* 621 F.2d 972 (9th Cir. 1980).

case in which the Ninth Circuit held that the CRRA is not pre-empted by the federal "first sale doctrine." Although the *Morseburg* decision is nearly 40 years old, the plaintiffs assert that it is still valid precedent as the ruling has never been overruled by any subsequent decision of the Ninth Circuit or Supreme Court.

The plaintiffs further argue that while the first sale doctrine terminates the copyright-holder's *exclusive* right to control the distribution of his works, it does not terminate the right-holder's "financial interest" in the re-sales of the work, such as the opportunity to collect royalties. Therefore, they reason, since the CRRA does not affect the right of distribution, the district court was wrong to rule that the law is preempted by the first sale doctrine.

In June 2017, Sotheby's and Christie's filed a joint answer, re-asserting their argument that under the first sale doctrine, once a copyright owner sells his work he has no "right to restrict, seek further payment from, or otherwise interfere with subsequent sales." Since, according to the plaintiffs, the CRRA grants the artist-copyright holders additional profits *after* the first sale (i.e., royalties), it violates the first sale doctrine.

As for the precedential value of *Morseburg,* Sotheby's and Christie's noted that the Ninth Circuit had explicitly based its decision in that case on the 1909 Copyright Act, which had been superseded by the 1976 Copyright Act. Therefore, any part of the *Morseburg* decision that was based on a no-longer-valid portion of the 1909 Act, must itself be considered invalid. Moreover, the 1976 Copyright Act stated outright that it superseded any similar rights "under the common law or statutes of any State," and the CRRA is state law.

In a separate reply filed in June 2017, eBay briefly mentions the Copyright Act, but focuses *its* argument on the contention that the CCRA does not apply to *it*, as the law is directed at "sellers of fine art or their agents"; whereas eBay contends that it is merely a platform for third-parties to buy and sell objects, the vast majority of which are not works of art.

It will soon be up to the Ninth Circuit to decide whether the California Resale Royalty Act, currently the only law in the U.S. that grants resale royalties to artists, will survive in its home state or if California's 40-year-long experiment with artists' resale rights will come to an end. Meanwhile, *federal* resale royalty acts have been proposed in Congress several times, most recently by New York Congressman Jerrold Nadler in 2016, but all have failed.

—**N.D.** and **S.F.**

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LETTERS TO THE EDITOR

REMINDER

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HOBBY LOBBY SETTLES LOOT SUIT

Hobby Lobby, the Oklahoma-based retail chain best known as the plaintiff in the Supreme Court's ruling that closely held corporations are "persons" and have the same rights to religious freedom as individuals,[1] recently made headlines in a very different legal action.

FIGURE 1. One of 3,450 cuneiform tablets forfeited by Hobby Lobby. Ph: U.S. Attorney's Office, EDNY.

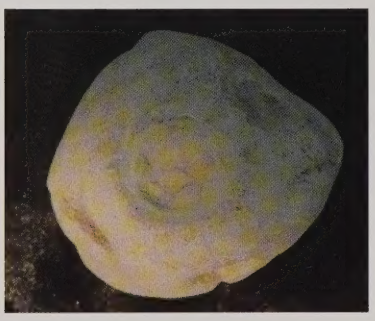

FIGURE 2. One of 111 clay bullae forfeited by Hobby Lobby. Ph: U.S. Attorney's Office, EDNY.

On July 5, 2017, the U.S. Attorney's Office for the Eastern District of New York filed a civil forfeiture complaint against Hobby Lobby to seize approximately 3,450 cuneiform tablets and clay bullae (balls of clay with ancient seal impressions) alleging that they had been illegally smuggled into the U.S. from Iraq **(FIGS. 1 & 2).**[2] A settlement had already been reached, however, and was filed simultaneously.

> "Although Hobby Lobby publicly asserted that its actions were based on ignorance of the relevant procedures, … that 'it was new to the world of acquiring these items …', the government's complaint paints a very different picture."

In the settlement, Hobby Lobby accepted responsibility for its actions and agreed to forfeit the 3,450 artifacts, as well as 144 cylinder seals and $3 million, which the Government deemed "proceeds" of the illegal activity. Although Hobby Lobby publicly asserted that its actions were based on ignorance of the relevant procedures, that "it was new to the world of acquiring these items, and did not fully appreciate the complexities of the acquisitions process,"[3] the government's complaint paints a very different picture.

Under the settlement, Hobby Lobby agreed to change its internal policies regarding the acquisition of antiquities, including annual training of its personnel and hiring outside customs experts, and is required to submit reports to the government every three months for the next 18 months regarding any cultural property purchases.

In order to understand why an arts and crafts retailer purchased thousands of antiquities in the first place, some background information is necessary. As noted in the civil complaint, in 2009 Hobby Lobby and its president Steve Green began assembling "a collection of ancient manuscripts, antiquities and other cultural materials." As of this writing, the Green collection consists of at least 40,000 antiquities, amassed in less than a decade. The reason for these purchases,

1 *Burwell v. Hobby Lobby,* 134 S. Ct. 2751 (U.S. 2014). The ruling supported Hobby Lobby's contention that being forced to provide contraceptives to its female employees under its health plan violated the corporation's religious freedom.

2 *United States v. Four Hundred Fifty Ancient Cuneiform Tablets,* No. 17-cv-3980 (E.D.N.Y. July 5, 2017).

3 Hobby Lobby press release, "Artifact Import Settlement," July 5, 2017.

not mentioned in the complaint, was that the Greens intended to establish a museum. Their plans are about to bear fruit, as the 430,000 square foot "Museum of the Bible" **(FIG. 3)** is set to open in Washington, DC in late 2017.

As part of his efforts to expand the collection, in July 2010, Green and a consultant, unnamed in the complaint but later identified as Scott Carroll, traveled to the United Arab Emirates (UAE) to inspect a group of 5,500 antiquities, including cuneiform tablets, clay bullae, and cylinder seals, offered for sale by three antiquities dealers, two from Israel and one from the UAE. Based on the inscriptions and other identifying features, many of the objects originated in modern-day Iraq.

Shortly after that visit, and again in August 2010, Hobby Lobby hired an outside expert on cultural property law to brief a group of the corporation's officials, including Green, Carroll, and Hobby Lobby's in-house counsel, about various issues related to the acquisition of cultural property. The outside expert, also unnamed in the government's complaint, has been identified as Patty Gerstenblith, distinguished professor of law at DePaul University and director of its Center for Art, Museum and Cultural Heritage Law.

In an October 2015 interview with the U.K.'s *Guardian* newspaper, Gerstenblith stated that at the meetings with Hobby Lobby, she "read them the riot act. I explained to them how the system worked in the interest of trying to discourage them from doing anything illegal. I knew they were building a collection, so I was concerned they might be doing something they shouldn't, even out of ignorance of the law."[4]

Despite Gerstenblith's warnings, in December 2010, Hobby Lobby signed a purchase agreement with Israeli Dealer #2 for the 5,500 objects it had been shown in July, for $1.6 million. Notably, Hobby Lobby officials never met, nor even communicated with, the purported owner/seller of the artifacts (Israeli Dealer #3). Among the many red flags that Hobby Lobby failed to notice, or willfully ignored, was the fact that the agreement included an invoice falsely stating that the objects' country of origin was Israel (a country until recently with notably lax antiquities regulations). In addition, at the request of Israeli Dealer #1, Hobby Lobby wired the payments,

FIGURE 3. Artist's rendering of the Museum of the Bible, set to open in Washington, DC later this year.

not to the alleged owner, but to seven personal bank accounts, belonging to five different individuals: the two Israeli dealers, the UAE dealer, and two others.

According to the complaint, the UAE-based dealer began shipping the objects in December 2010 and by early January 2011, had shipped 10 packages to three different addresses in Oklahoma City: the headquarters of Hobby Lobby Stores, Inc. and two of its corporate affiliates. The packages were falsely labeled as "ceramic tiles," "clay tiles (sample)," and the like; bore fake shipping labels identifying Turkey as their country of origin; were accompanied by false invoices that listed the value of the contents as below $2,000; and falsely identified the UAE dealer as the seller of the objects. U.S. Customs officials intercepted and seized the next five January 2011 shipments, which contained approximately 500 cuneiform tablets and clay bullae in all.

4 "Hobby Lobby investigated for trying to import ancient artifacts from Iraq," *The Guardian*, October 28, 2015.

In March 2011, Customs officials filed a notice of seizure with Hobby Lobby for the 500 objects. The corporation responded by seeking their return, submitting false and contradictory provenance statements, one stating that the works were owned by Israeli dealer #3, another that they were owned by the UAE dealer. Right as this seizure dispute was occurring, in September 2011, another package was received by Hobby Lobby; it contained 1,000 clay bullae. Unlike the other shipments, this one was shipped by Israeli dealer #3, not the UAE dealer, and its false country of origin was listed as Israel, not Turkey. Subsequently, Customs officials seized these bullae, the objects from the first ten shipments, and other antiquities in Hobby Lobby's possession, amounting to approximately 3,000 cuneiform tablets and clay bullae. Together with the items seized in January 2011, the total stood at 3,450 objects.

In 2015, the issue was referred to the U.S. Attorney's Office for judicial forfeiture proceedings, which eventually resulted in the July 2017 settlement discussed above. The whereabouts of the remaining 2,000 objects from Hobby Lobby's 5,500-object purchase are unknown. However, as part of the settlement agreement, if they ever come into Hobby Lobby's possession, or if the company learns of their location, it must inform the government and forfeit the objects.

Iraqi law considers all antiquities in Iraq to be the property of the state. For its part, the U.S. has restricted and/or barred the importation of Iraqi antiquities into the U.S. since 1990. The current U.S. legislation (2010) carries both civil and *criminal* penalties.[5] Nonetheless, the U.S. Attorney's Office chose to charge Hobby Lobby with a customs violation, specifically an *in rem* civil forfeiture provision law – 19 U.S.C. §1595a(c)(1)(A) – of the 1930 Tariff Act. This law has become a favorite of prosecutors in art and antiquities cases because it only requires the showing of *probable cause* that an object entered the country illegally in order to subject it to forfeiture.[6]

According to Leila Amineddoleh, a cultural property lawyer and law professor who served as a consultant for the U.S. Attorney's Office in the case, charging Hobby Lobby with a criminal offense would have been problematic because it would require proving *beyond a reasonable doubt* that a specific person or people at Hobby Lobby knew the antiquities were stolen.

Since Hobby Lobby has thousands of employees, it would be very difficult, and time-consuming, to disprove assertions that someone only knew "part of the story."[7] Patty Gerstenblith came to a similar conclusion, noting, in an interview with Chasing Aphrodite, that "with so many people involved [in the transaction], they've created plausible deniability as to who knew what."[8] Gerstenblith also noted that although her "goal was to discourage [Hobby Lobby] from doing the wrong thing by telling them all the wrong things they could do … that she couldn't rule out it was all the opposite … that they used [her] advice to evade the law as opposed to follow the law."

—N.D. and **S.F.**

5 Iraq Stabilization and Insurgency Sanctions Regulations (2010), 31 C.F.R. 576. The complete text of these laws, as well as additional cultural property legislation from the U.S., Iraq, and approximately 120 other countries, can be found on IFAR's Art Law & Cultural Property Database at www.ifar.org.

6 The customs law is discussed at length in *IFAR Journal*, Vol. 12, no. 4 (2011). It has been used in several high profile cases, most notably *U.S. v. Portrait of Wally*, 663 F.Supp. 2d 232 (S.D.N.Y. 2009).

7 L. Amineddoleh, "Why the Feds Were Smart Not to Throw the Book at Hobby Lobby for Buying Iraqi Loot," Artnet.com, July 12, 2017.

8 Chasingaphrodite.com, July 10, 2017, "Hobby Lobby's Legal Expert Speaks."

THIRD TIME *NOT* THE CHARM (SO FAR) FOR NY STATE BILL PROTECTING ART EXPERTS

SPONSORS ARE NOT GIVING UP

It is getting all too familiar. The 2017 session of the New York State Legislature ended in June without passage – once again – of the proposed law intended to protect art "authenticators" from lawsuits when rendering opinions about works of art.

This is the third time recently that the Bill (A5120 and S1974) has been introduced in the state legislature and, just as with the previous two times (in 2014 and 2016), the Bill passed overwhelmingly in the New York State Senate (61-1), and got stalled in Committee in the Assembly.

The Bill – officially, "An act to amend the arts and cultural affairs law, in relation to opinions concerning authenticity, attribution and authorship of works of art" – is intended to remedy the growing problem of art experts refusing to authenticate, or opine on authenticity because of the risk and costs of lawsuits. Even if the expert wins, which is highly likely, legal costs can be prohibitive. This concern has led to the well-publicized disbanding in recent years of several authentication boards established by artists' foundations and estates (e.g., the Pollock-Krasner, Warhol, and Keith Haring Foundations and the Basquiat Estate) and the refusal of many independent scholars to opine.

The problem, however, is not new. In the late 1960s, a similar bill in the New York State Legislature, also aimed at protecting art experts from lawsuits when giving opinions, failed to pass. In fact, it was in the wake of that failure that IFAR was created. The then Attorney General of New York, Louis J. Lefkowitz, called for the creation of an impartial nonprofit that could, effectively, serve as an administrative and legal framework for art specialists to render opinions without fear of liability. The Authentication Research Service created then remains one of IFAR's core activities.

The current Bill was introduced in the NYS Legislature in March 2017. Co-sponsored by Assembly Member Linda Rosenthal and State Senator Betty Little, the same co-sponsors as in 2014 and 2016, the Bill is also supported by the New York City Bar Association, and many art organizations, including IFAR.

The original draft legislation in 2014 and a revised iteration submitted in 2016 and again in 2017 were co-authored by attorneys Judith Bresler and Dean Nicyper, Co-Chairs of the Authenticity Subcommittee of the Art Law Committee of the City Bar Association. Bresler and Nicyper, with the assistance of the Subcommittee, worked on the bill for years prior to 2014, soliciting comments from the field.

> Bresler told IFAR, "We are disappointed that our Bill has not moved out of the Assembly's Tourism Committee. We are certainly not giving up. … We plan to regroup in the fall and perhaps do a touch of rethinking …"

While the proposed law cannot eliminate all risk, it is intended to reduce "frivolous" (not meritorious) civil lawsuits against people giving "good faith" opinions on authenticity by insisting that any claims be made with particularity. Authenticators who have a "financial interest" in the outcome of the opinion (other than compensation for their services) are not protected.

To get the Bill passed, there have been modifications over the years. While the 2014 version required "clear and convincing evidence" for a suit to be brought against an authenticator and assured that a prevailing authenticator would recover reasonable legal fees, the threshold for

bringing suit in the current bill is: a "valid and verifiable" claim, and the fee-shifting provision is less certain: the prevailing authenticator "may" be allowed to recover legal costs. Nevertheless, the Bill still failed to pass. If it does pass, it will result in changes to Articles 11 and 15 of the NYS Arts and Cultural Affairs Law.

WHAT LIES AHEAD?

New York State Senators and Assemblymen serve for two years, and the next election is not until November 2018. Thus, although the 2017 legislative session has effectively ended (January – June), the Bill – with the same Bill numbers – can in theory continue its legislative path next January, 2018. And it looks like that is the current plan. The Bill does not have to be formally "reintroduced," but it will have to be voted on again in the Senate, which has passed it three times already. So its passage there is a foregone conclusion. The challenge is the Assembly, which is still analyzing the Bill in Committee. In three tries, it has never gotten out of that Committee.

Judith Bresler told IFAR that she and her colleagues "are disappointed that our Bill has not moved out of the Assembly's Tourism Committee, [but that they] are certainly not giving up." They are planning "to regroup in the fall and perhaps do a touch of rethinking on the Bill. And, while we have sizable industry support, we'll continue to work to raise the volume — and mass — of our advocates."

—S.F.

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THE RECOVERY OF THE QUEDLINBURG TREASURES: WOULD ANYTHING BE DIFFERENT NOW?

An *IFAR Evening,* April 24, 2017

MODERATOR

SHARON FLESCHER, Executive Director, IFAR

SPEAKERS (IN SEQUENCE)

CHARLES T. LITTLE
Curator Emeritus of Medieval Art and the Cloisters,
The Metropolitan Museum of Art

THOMAS R. KLINE
Partner, Cultural Heritage Partners, PLLP;
Professorial Lecturer, George Washington University

With Comments by **CASSIE HAY**
Producer and Director of *The Liberators*

INTRODUCTION

On April 24, 2017, IFAR devoted an *IFAR Evening* in New York to the Recovery of the Quedlinburg Treasures, and asked the question: Would anything be different now?

The theft by an American soldier of twelve precious medieval objects from a trove belonging to a historic German church took place in the closing days of World War II. Forty-five years later, in 1990, many of the objects were found in the small town of Whitewright, Texas. Their recovery, and the ensuing legal battles (there were 3 separate cases), were front page news at the time. So, why organize an IFAR program about the subject all these years later?

First and foremost, the impetus was a soon-to-be-released documentary film on the subject – *The Liberators* – which IFAR screened at the *Evening*. Using old newsreel footage, and interviews with family and neighbors of the late Joe Tom Meador, the soldier who took the items in 1945, as well as interviews with art specialists (including IFAR's Executive Director) and lawyers and others who pursued the case, the film lays out the circumstances of the theft and recovery, and, perhaps more importantly, the mindset of Meador's family, who sought to profit financially from the objects they inherited upon Joe Tom's death in 1980. The family resisted not only the restitution of the objects to Germany, but the condemnation of either Joe Tom's actions or their own.

Secondly, much has changed in the field of WWII-related art looting and restitution since 1990, in regard both to attitudes about wartime theft and to the viability of using U.S. courts to effect restitution. The art world, too, has changed, and has a heightened awareness of the issue and the need for due diligence standards in the acquisition of art. One of IFAR's goals in organizing the *Evening* was to see what, if anything, would be different if the Treasures were found today.

Third, two of the Treasures taken by Meador are still missing. We wanted to bring them to the attention of our audience **(FIGURES 12A & B).**

The Quedlinburg case raised profound ethical as well as legal issues. Whether, for example, Germany, our former enemy, could successfully bring suit in the United States against the family of an American soldier who served in the War. Case law on this subject was not well developed. Whether it is appropriate to pay a recovery fee, or, as Germany called it at the time, a "finder's fee," to current possessors to get back a stolen item, especially when the objects had not been acquired in "good-faith"? (Germany originally agreed to pay $3 million to get back the most valuable item, the *Samuhel Gospels,* although, in the end, it paid less than that for all the Meador objects.) What ownership rights do people have to stolen art, even if they, themselves, weren't the perpetrators? Did the family have the right to send two of the most valuable items – the *Samuhel Gospels* and another manuscript – across state and national borders to Europe for sale, or did they violate the U.S. National Stolen Property Act? And, finally, whether it is ethical for art professionals to evaluate works of stolen art, and then turn a blind eye to the moral implications of not reporting the whereabouts of the stolen objects to authorities?

These are only some of the questions raised by this important case, which played out on the pages of the *New York Times* and other publications. The late William Honan, an investigative reporter for the *Times,* doggedly pursued the case, along with a German researcher, Willi Korte, both of whom play a prominent role in the film.

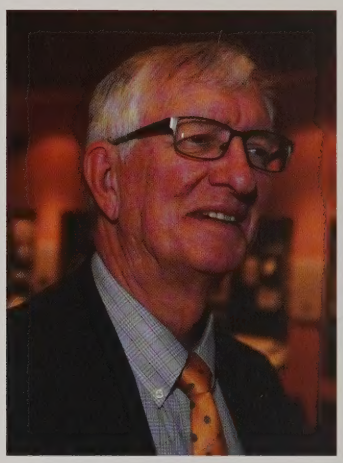
The two speakers at the *IFAR Evening* also feature prominently in the story. Thomas R. Kline was the attorney for the Quedlinburg Church, which brought the civil suit against the Meador heirs to recover the works. Dr. Charles (Chuck) Little, Curator Emeritus of Medieval Art at the Metropolitan Museum in New York, went to Texas to identify the objects before their return to Germany.

On the following pages are the edited *IFAR Evening* talks, together with a brief panel discussion and audience Q&A, in which Cassie Hay, producer and director of *The Liberators,* also participated. IFAR's Executive Director, Dr. Sharon Flescher, moderated.

—S.F.

THE QUEDLINBURG TREASURES: HIGHLIGHTS AND MYSTERIES

CHARLES T. LITTLE*

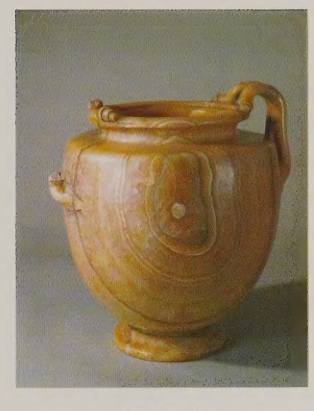


Let me ask you to dial back your memory about 1200 years, and try to place the extraordinary objects we know as the Quedlinburg Treasures in their historical placement in Quedlinburg. Located in Northern Germany, and, until 1989, just east of the border dividing East and West Germany. During the Middle Ages the town of Quedlinburg came under the rulership of nearby Halberstadt **(FIG. 1)**. Quedlinburg was positioned in an area of considerable wealth, partly due to its location at the foothills of the Harz Mountains. The gold and silver in the region generated a great deal of income for the ruling parties – the Saxon dukes and kings in the 9th and 10th centuries. But with the disintegration of the Carolingian empire in the 9th century, which led to the rise of the Saxons in the 10th century, focus shifted more to the east. This, together with the importance of King Henry I (878-936), Duke and then first King of Saxony, whose ancestral castle was at nearby Gernrode, positioned Quedlinburg favorably. It was from Quedlinburg that missionaries and military conquests went east in the 10th century in order to take over Slavic and Magyar lands and Christianize the population. So, from 922 on, Henry I established Quedlinburg as a stronghold with a castle. The church – St. Servatius – that was established there by Henry's widow, Mathilde, is one of the very few places in Europe where a medieval treasury still exists. The treasury space is very near the Crossing of the church, and it is there that these Quedlinburg Treasures were kept, from the 10th century onward. The objects sent to the United States represented only a small portion of that treasure. The total number is in the neighborhood of 30-some objects.

FIGURE 1. Map of Saxony showing Quedlinburg highlighted in the east.

An 1855 drawing of the treasury **(FIGS. 2A & B)** shows an arcaded space with cupboards that con-

* Charles T. (Chuck) Little, Ph.D. is Curator Emeritus of Medieval Art and The Cloisters, The Metropolitan Museum of Art, where he worked for 45 years.



FIGURES 2A and **2B.** **A** (left) 1855 drawing of the Quedlinburg treasury; **B** (above) shows the Cana jar (Egyptian or Roman alabaster) visible in the drawing.

tain the reliquaries and other treasure objects. These include an alabaster vessel known as a Cana jar, one of the miraculous jars from the Miracle of Cana, where, as told in the Bible, Christ transformed water into wine.

The *Samuhel Gospels,* named after the scribe who wrote it **(FIG. 3),** was the first of the Quedlinburg Treasures to reappear. Although the manuscript was well known, it was not really understood until its reappearance, which gave scholars the opportunity to reexamine it and exhibit it in an exhibition that took place in Munich in 1991.[1] A Carolingian manuscript produced probably in the Alsace-Lorraine region around 850, the *Samuhel Gospels* is a deluxe gospel book. Each of the gospels of the four evangelists has a frontispiece **(FIG 4),** and it is covered with a deluxe cover that is not of early period, but of the Gothic age. I will return later to why these things are layered historically over time.

Among the other treasures associated with Quedlinburg—but not taken by Joe Tom Meador to Texas, as it had previously been moved to a Berlin library—is the *Quedlinburg Itala Fragment* **(FIG. 5).** It is a fragment of an illuminated manuscript of the very earliest known Bible that survives today. Produced in Rome around 420 AD, only four or five leaves exist. It must have been

FIGURE 3. ***Samuhel Gospels*** jeweled cover, c. 1225-30.

FIGURE 4. St. Luke from the ***Samuhel Gospels,*** ca. 850.

FIGURE 5. ***Itala Fragment*** of an illuminated Book of Kings manuscript), c. 420 AD. Not part of the group of objects brought to Texas.

1 *Das Quedlinburger Evangeliar: das Samuhel-Evangeliar aus dem Quedlinburger Dom,* Bayerische Staatsbibliothek, Munich, 17 January-27 February 1991.

FIGURE 6. So-called ***Comb of Henry I,*** ivory, Syrian or Egyptian, ca. 6th-8th centuries.

fragmented at an early date because it was recycled into material for a book binding at a much later date, and was only rediscovered in the 19th century for its great rarity and significance.

The ***Comb of Henry I*** **(FIG. 6),** so-called because it was thought to have been gifted to him, is not mentioned until later in some of the church inventories. It is an exotic form of a comb, often called a bishop's comb for installation ceremonies, and actually comes from the eastern Mediterranean, from either Egypt during the Fatimid period or Syria around the 600s or 800s. It received its luxurious gold and gem deluxe mountings in the west in the 10th century, probably at the time of Henry I. The deluxe style and form are like a few other combs we have of this period, but this one bears an aura of sanctity because of Henry's association with it.

One of the remarkable Quedlinburg works sent to Texas is a reliquary box, or casket, that is also associated with Henry I **(FIGS. 7A, B & C).** Decorated with carvings depicting seated apostles, it has elements on it that date from the 9th, 10th and 13th centuries. Around 1200, a number of these elements were repositioned and then enlarged with ivories from other periods.

This casket was one of the objects I examined in Dallas, just before the exhibition at the Dallas Museum in 1991,[2] to help verify them and establish something about their condition prior to returning them to Quedlinburg. It originally functioned as a container for relics, but then also served later as a portable altar. The 10th century ivory panels decorating it had a profound and coincidental effect on an acquisition that I later made for the Metropolitan Museum. In 1993, the Met acquired a fantastic ivory panel – *Three Marys at the Holy Sepulcher* – that was very similar to one of the Quedlinburg ivories. Not that the museum's ivory panel came from there – both were probably produced in Milan around the year 950 – but the Quedlinburg reliquary casket helped verify its place historically and artistically within the Carolingian and early Ottonian world of Europe.

FIGURES 7A-C. ***Reliquary Box of Henry I,*** late 9th /10th-13th centuries, three views. **A** (left) full view; **B** (upper right) back view; **C** (lower right) top view. Goldsmith work, German, c. 1230-40; ivory panels, German, 11th century; elephant ivory panels, Northern Italian, 10th century. Wood core; ivory; gilt copper; gilt silver openwork; coral, pearls, garnets, agates, amethysts, almandine, and colored glass. 29 x 15 x 17 cm.

Another great treasure highlighted in the film, the *St. Servatius Reliquary* **(FIG. 8),** is, like the reliquary casket, layered over time with objects not only of the Carolingian period, but earlier and later. The ivories on it, carved with images of the apostles and Christ, are enhanced with gold filigree and gem-encrusted elements.

[2] *The Quedlinburg Treasury,* Dallas Museum of Art, February 16-April 14, 1991.

FIGURE 8. ***St. Servatius Reliquary*** (So-called casket of Otto I). Roman amethyst head of Dionysus; ivory panel with apostles and zodiacal signs, Carolingian, ca. 870; gold setting, ca. 1200.

Most astonishingly, on the front is a gigantic amethyst head of Dionysus. This is a Roman element that has been incorporated onto a Carolingian 9th-century object. You might wonder why such an exotic object was placed on a box that was originally intended as a portable altar and was then transformed into a reliquary casket. The answer is that Henry I received a relic – a bone – of St. Dionysus from Saint-Denis in France. The mystical association of that head of Dionysus had a profound significance, plus, of course, Dionysus, the saint. The color of the amethyst is associated with the Eucharist, and thus the blood of Christ; so to incorporate it onto this already lavish object was very important.

One of the amazing things about the Quedlinburg Treasures is the layered historical context of these objects. Many of them come from the east, such as the crystal vase decorated with birds **(FIG. 9).** A small vessel, it probably originally had either some kind of a perfume in it, but then was transformed in the west to become a container for relics. Such objects as these were produced in Egypt or in Syria in the 9th and 10th centuries. How they got to the west has always been a big puzzle. We think that it was through the marriage of Otto II (grandson of Henry I) in 972 to a Byzantine princess, Theophano. The Ottonians thought she was a royal princess, but she was, in fact, a secondary royal princess; nonetheless, she became an extraordinarily important figure in the west and is presumed to have a grand dowry of astonishing objects in gold, silver, and crystal. Perhaps, among them, this object. She also resided in Quedlinburg. In fact, when Henry I died, he gave Quedlinburg to his wife, Mathilde, who became the canoness there and established it as a very powerful royal nunnery. Many key women stayed there, including Theophano.

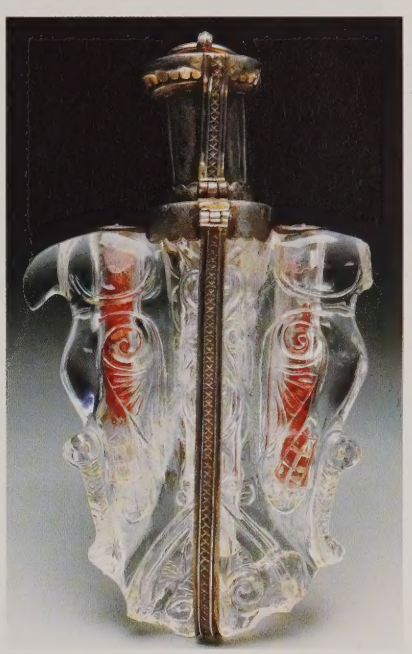
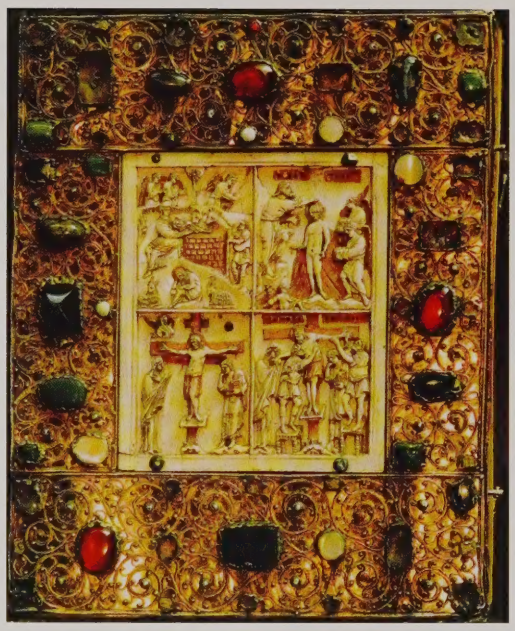


FIGURE 9. ***Reliquary Flask in the Form of Two Birds.*** carved rock crystal, Fatimid Egypt, 10th century. gilt silver mounts, German, 14th century; 18 x 10.5 cm.

A symbolic golden staff **(FIG. 10)** that was a gift of Otto III to honor the abbess, his sister, Adelheid, around the year 1000 is mentioned both in the earliest inventories of Quedlinburg and in chronicles of the period around 1000. So, we have a coordination of descriptions of Quedlinburg from a very early date that testifies to the artistic and historic significance of the objects.

FIGURE 10. ***Gold Staff of Abbess Adelheid,*** sister of Otto III, gift to her in 999.

The Gospel Book of St. Wiperti **(FIG. 11A)** was also part of the group that was returned from Texas, but other manuscripts were not removed by Joe Tom Meador, including a Byzantine

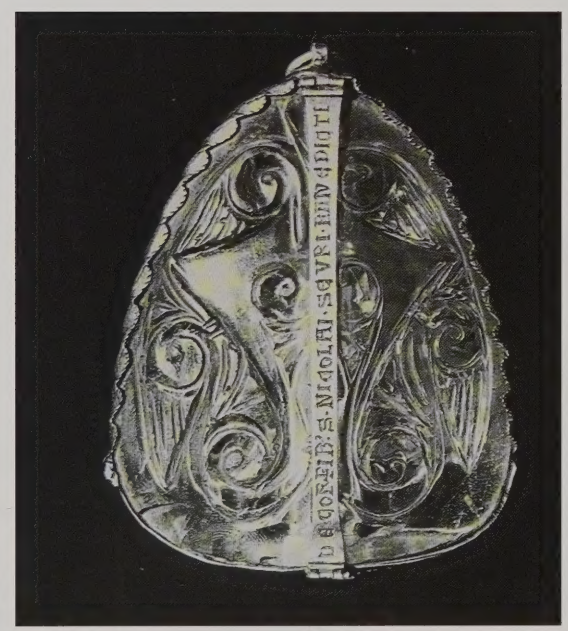


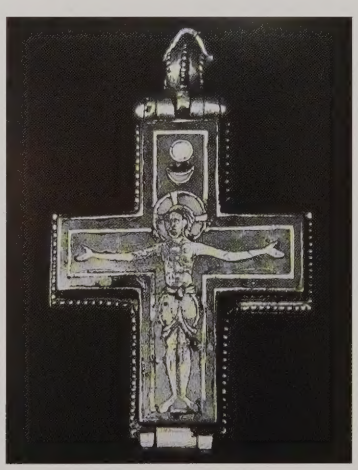
FIGURES 11A and **B. A** (left) ***Gospel Book of St. Wiperti,*** 1513, wooden core, gold silver foil; precious stones. 34.6 x 26 cm; **B** (right) ***Otto I-Adelheid Gospel.*** Ivory cover, Byzantine, 10th century; setting, German, ca. 1225. (Not taken to Texas.)

Gospel Book **(FIG. 11B)** that incorporates a Byzantine ivory cover, perhaps, again, a gift of Theophano that came into the royal family in the 10th century.

I will conclude with the two objects that were featured in the film that went to Texas and are still missing **(FIGS. 12A & B).** The more important one, **(12A),** is one of the Fatimid Egyptian crystals that was taken to the west, and later functioned as a reliquary container. The inscription on the silver band tells us what it contained: the blood of Christi, and relics of the virgin, of Nicholas, Benedict, and Severus, among other small fragmentary relics. Where is this precious treasure today? The hunt is still on.

This discussion only gives a glimpse of the richness of the Quedlinburg Treasures. Since it was a royal treasury, we have inventories of the period with descriptions including 8 crosses in amber, 5 in gold, 6 in silver, 12 flasks of gems and crystal, 3 ivory boxes with relics of saints, a silver gilt situla – a bucket for holy water, 2 silver plates, a golden paten (plate), and 53 boxes in gold (whose date and character we do not know). There were also 5 crystals, of which I have illustrated a few. So one can imagine the grand wealth of this royal treasury from the early and high Middle Ages, which was perpetually cared for, had layers of meaning throughout time, and was preserved even after the Reformation. This celebrated medieval treasury would be complete if we could only find the two missing pieces.





STILL MISSING

FIGURES 12A and **B. A** (left) ***Fatamid Egyptian Crystal,*** 10th century; **B** (above) ***Reliquary Cross Pendant*** (North German, c. 1200), enamel.

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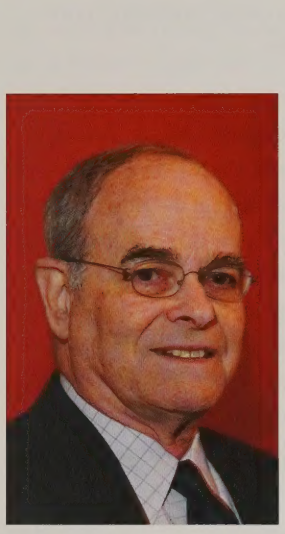
THE QUEDLINBURG TREASURES: THE LEGAL CONTEXT FOR RECOVERY

THOMAS R. KLINE*



My task is to try to set the legal and historical context for the Quedlinburg proceedings depicted in the documentary just shown, *The Liberators,* and then try to answer the question whether anything would be different now.

There were, in fact, several legal cases. The first case was the civil suit Willi Korte and I handled together, which involved the Quedlinburg Church (of St. Servatius) suing the Meador family to get the objects back.[1] That case encompassed the search that was highlighted in the film; the finding of the objects; and obtaining a temporary restraining order to fix the objects in Texas. The Meador family wanted to move them to a neutral country; I thought the U.S. was neutral enough. But, as I said in the film, this was a white-knuckle operation; we never knew what would happen from day to day. So, we filed for the temporary restraining order at 9:00 a.m.; we talked to the judge at 12:00 or 1:00; and the judge gave the order to allow us to photograph the objects using the white gloves and strobe lights that Willi Korte describes in the film, to avoid damaging them. But we learned in the course of doing that, that between 9:00 and 1:00, the family had been moving the objects around. So, we went to the court and got expedited discovery, including the depositions mentioned in the film. We were able to establish where the objects were and where they had been, except, obviously, for the two that are still missing. We also established that the family was willing to take the Fifth Amendment, which would have made the litigation somewhat easier than might have been thought since people generally view taking the Fifth as indicative of guilt, even though as lawyers we know they shouldn't. Finally, there were the legal settlements. I am not allowed to talk about the dollar amounts, which were confidential, but in the criminal case,[2] the court reported that it was a million dollars. So, these are not the astronomical figures that you sometimes see wrongly reported in the press.

While the case was going on, the Internal Revenue Service (IRS) found out that the Meador family (Joe Tom's brother and sister) had not declared these objects or paid any kind of federal inheritance tax. The Meadors made the defense that they didn't own the objects because they were *stolen,* so how could they be taxed on them? In a detailed Private Letter Ruling, the IRS crossed that bridge fairly easily and said that possession was enough for taxation and that valuation was based on the fair market price in 1980.[3] The $50 million figure mentioned in the movie is the approximate sum of $8.6 million in federal taxes, $2.1 million in

* Thomas R. Kline, is an art law attorney and Partner at Cultural Heritage Partners, PLLC in Washington, DC and New York.

1 *Stiftskirche-Domgemeinde of Quedlinburg v. Meador,* No. CA 3-90-1440-D (N.D. Tex. June 18, 1990). This case was settled in 1992.

2 *United States v. Meador,* No. 4, 4:96-cr-00001, (E.D. Tex. Oct. 22, 1996), *aff'd,* 138 F.3d 986 (5th Cir. 1998).

3 IRS Private Letter Ruling, August 30, 1991 electronic citation 91 TNT 263-23. The tax case was settled in federal tax court for $135,000 on April 20, 2000.

penalties, and $40 million in interest they were asked to pay. Why the IRS settled in April 2000 for $135,000, you will have to ask them. I don't know.

There was a very strange series of events that are not really dealt with in the documentary, in which Willi Korte discovered letters from Joe Tom Meador revealing Meador's knowledge that he was stealing religious objects of high value. The family had not produced any letters to us during the expedited discovery, so we didn't know about them. Willi made those documents available to the U.S. attorney in Texas, who began a federal criminal prosecution *(United States v. Meador)*. I don't want to get into too many legal details, but they got permission from the court to toll the statute of limitations while they investigated in Germany. So the statute of limitations stopped running for a period of time between when the Germans initiated their response to when they said they were finished. But after the Germans said they were finished, they kept cooperating. That lulled the U.S. Attorney into a false sense that the statute of limitations was still tolled. But the district court, and then the court of appeals, held that it was not tolled; that whether the Germans continued to cooperate or not was not relevant. When the U.S. asks a foreign country for assistance, and the foreign government, in this case, the German, authority, says, "I have responded to your request," that ends the period in which the statute of limitations is held in abeyance.

So, the criminal case was dismissed in October 1996 on the technicality that the statute of limitations had expired. The trial against the sister and brother of Joe Tom Meador and their former attorney, John Torigian, who had carried the Quedlinburg Treasures around the U.S. and to Europe in an attempt to sell them, had been scheduled to start the next month. The three were accused of illegally conspiring to sell the stolen objects and were facing possible prison sentences of up to 10 years and fines up to $250,000. Torigian had taken the two manuscripts Chuck Little discussed **(FIGS. 3 AND 11A)** to Switzerland, and that is how we knew that we were dealing with people who were capable of anything because they had gone to many different specialists; they had learned that these objects were stolen; and yet they shipped them across state lines, which even if you don't know what the law is, you could probably figure out isn't a good thing to do.

Had our case gone forward, the legal issues would have been those that we see in many restitution cases. Fortunately, there was some historical literature about the objects. Most of the objects were documented; not all were previously photographed. There is a moment in the movie where we are shown a series of contact pictures. Those are the pictures *we* had taken, not historical pictures, and they included one object that wasn't from Quedlinburg. To substantiate the claim, we had the kind of scholarly record you would expect, a drawing here and a description there. Ownership would have been established by using these historical records and expert testimony to prove that the Meador objects were those from Quedlinburg.

Theft, itself, is an interesting and at times challenging subject to prove in these cases. The church did not abandon these objects. They were put in storage for safekeeping. Although they were put there by the SS, I don't think that would have made any difference. There was no evidence of a sale or a gift. The family was quoted in the newspapers as saying, "Oh, he (Joe Tom) found them in the gutter." In the film, you hear the family story that the Quedlinburg priest had asked Joe Tom to take the objects away for safekeeping. Well, a priest isn't authorized to give away treasures that belong to the church. So, their stories were all pretty thin.

That adds up to wrongful possession – the objects are mine and you won't give them back; you're in wrongful possession. And as we've seen in more recent restitution cases, choice of law would have ended up being a critical issue in this case. Because the Quedlinburg church, as the minister said, was not able to contact the West, they had no ability to search for the treasures after the war. Under the normal standard for due diligence, we would have had to say that the church was not able to be diligent because of the law. I think that's a logical argument, and since 1990, there has been some

precedent, but at the time, that was the one thing we were worried about; namely, that the church had not been looking for the objects.

So, would anything be different now? The answer is, as Robert Edsel said in the movie, more likely yes than no. The significance of this case is that it happened; that we found these objects, and we were able to secure them and settle the case. Attorney Larry Kaye, who is attending this program, handled the one German recovery case of significance prior to this.[4] But that had been a long time before. There hadn't recently been a case like this. So, just the fact that we succeeded in securing the objects and settled from a position of strength, is, I think, the historical significance of the case.

Germany was totally unprepared for this case. In Germany the statute of limitations had run out. They assumed they could *only* buy objects back. Many Germans still assume that. In most states in the U.S., on the other hand, we have the Discovery Rule, under which the statute of limitations does not begin to run until the victim discovers the object or with diligence reasonably should have discovered it. So, the Germans did not have any frame of mind that they had a legal claim. Moreover, the Quedlinburg church was in the east; it was a small church and was in no position to conduct major litigation in the United States. At that time, there was no federal German cultural ministry. Culture was a state matter, and the formerly East German state was not in a position to stage major case litigation. We have to remember, we're talking about people who had lived through 45 years of Communism and, before that, 13 years of National Socialism. They were not ready to participate in a pluralistic democracy; they had no frame of reference for what was going on.

Fortunately, though, the newly reunited German government did what we would do. They set up

"The [German government] wanted to settle, and I had some sympathy for that position, because I couldn't guarantee success … These are priceless objects of enormous historical/cultural significance that had to return to Germany. In litigation there are always risks, and if you can't take the risks, it is hard to litigate."

a task force, and we were put under the Interior Ministry and the Cultural Foundation of the States (Kulturstiftung der Länder), and they directed the case. But the decision making was mostly ad-hoc. They wanted to settle, and I had some sympathy for that position, because I couldn't guarantee success, and putting aside whether the financial value is $250 million or $350 million, these are priceless objects of enormous historical/cultural significance that had to return to Germany. In litigation there are always risks, and if you can't take risks, it is hard to litigate.

The U.S. response was tepid. I was in touch with U.S. Customs, but they thought we were doing fine, so we got no support on the civil side. Today, that would not be the case; today you could go to the U.S. Attorney or the FBI and get some assistance. The tax assessment was settled for a relatively low figure, almost giving the impression that the IRS didn't want to deal with it or had some worry. The criminal prosecution went forward, but culminated in the previously mentioned mistake regarding the statute of limitations, which was very unhappy for the prosecutors, and a great victory for the family.

The significance of the movie is that it documents important historical events. This is probably the biggest recovery of a U.S. wartime theft that we have seen and maybe will see. Is the message that cheaters never prosper? Or do they? I'll leave that to you. Your takeaway should be, "Do not take stolen property across state lines for sale."

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[4] *Fed. Republic of Germany v. Elicofon*, 358 F.Supp. 747 (E.D.N.Y. 1970), *aff'd sub nom. Kunstsammlungen zu Weimar v. Elicofon*, 478 F.2d 231 (2d Cir. 1973), *cert. denied*, 415 U.S. 931 (1974), *reh'g denied*, 416 U.S. 952 (1974).

THE QUEDLINBURG TREASURES
Q & A

Moderator: Sharon Flescher (SF): Cassie Hay, producer and director of the documentary *The Liberators,* has kindly agreed to join us for the Q&A and discussion.

Since the subtitle of this program is "Would anything be different now?", I want to start the discussion by adding to Tom Kline's list something that I think is shocking today; namely, that in the course of the years that the Meador family was trying to sell the works after Joe Tom's death, they approached around 10 different dealers and appraisers, as well as Christie's auction house. Christie's actually held on to the works for months – close to half a year. They didn't want to sell them; nor did the other dealers. They knew they were stolen. But no one reported anything to the German government, or to anyone else. I believe that if these works were to turn up today, that would not be the case. For sure, it would not be the case at Christie's because they established guidelines in 2009 laying out procedures to deal with these situations. Sotheby's the same, and I think most dealers, too. Understandably, no one wants to get embroiled in a lawsuit, but I doubt very much that people today would simply return works to consignors that are *known* to be stolen, as were the Quedlinburg Treasures. I like to think *that* is something that would be different; that the art world has changed. That was then, and this is now. Does anyone disagree with me? Chuck? You knew some of the people who were shown the works.

A Charles Little (CL): I knew Dietrich Kotzsche from the State Museum of West Berlin, the main authority who helped confirm, identify and then return the objects to Berlin, where they later organized a wonderful exhibition with the reunited treasures after they were conserved. My own first knowledge of the Quedlinburg objects was a call from colleagues in the Dallas Museum, saying that they had the objects there. At the time that I went to Dallas – it was the end of 1990 – I don't think there was a clear avenue forward.

"Understandably, no one wants to get embroiled in a lawsuit, but I doubt very much that people today would simply return works to consignors that are *known* to be stolen, as were the Quedlinburg Treasures."

But once they got permission to have the exhibition before the objects were returned, it was put together pretty post-haste, as I recall. The knowledge of the *Samuhel Gospels* being on the market is something others could probably address better than I can, because it was circulated around. But there were other instances, about the same time, with other auction houses, where works of art from families of GIs were being offered. I was involved in one case concerning objects that were from a museum in Trier, Germany and had turned up at one of the auction houses, which was cautious and asked me about them. This was an instance of goodwill, where the family, once it realized the objects were known and published, immediately returned them to Germany and to the museum. So there was an element of goodwill on the part of a lot of people.

Q SF: One thing that distinguishes the Quedlinburg case was that these objects were so well-documented and were so clearly stolen.

A Thomas Kline (TK): That's right. Joe Tom Meador was a forward observer for the Armored Field Artillery, so he would get to a town before anyone else and would help himself, particularly to church objects, crystal, and china. Other people in his unit described his activities to us. So this was a particularly egregious case, not just because of the quantity of objects. As can be seen from his letters, his intent was pretty clear, and his knowledge. He was trained in the arts, he was an art teacher.

But I want to follow up on what Charles Little just said. I've worked with the Monuments Men Foundation for the Preservation of Art on a number of cases, and as the GIs of that generation continue to age and to die off, their families are burdened by

objects that they may have brought home as souvenirs. It is hard *not* to be judgmental of Joe Tom Meador. I'm sorry his nephew doesn't like that. We never judge these people really. They never get punished; we have celebrations. Most recently, we got back a 16th-century tapestry that had been in Hitler's Eagles Nest and had been taken in 1945 by an officer in the 101st Airborne Division. His family came forward and returned the object, and we figured out who should get it; it went back to the Bavarian Museum.

SF: When was this?

TK: This was about 6 months ago, and it will be part of a television program.[1]

Q SF: Cassie, what spurred you to make this movie now? It is not a new story.

A Cassie Hay (CH): That was something we struggled with because the story was not recently in the news, but I think it continues to be relevant. It had an interesting mix of where I had lived in New York for 14 years, and where I am originally from, Denison, Texas. That is where the treasures were found in the bank vault. I was sitting around at Chili's in Denison and someone said, "Did you hear about that treasure they found down at the bank?" The more I learned about it, the more incredible this story was. I couldn't believe that I hadn't seen a program on it, and the more I learned, the more fascinating it was. Especially, to speak to what Tom was speaking about, about how differently things would be handled today; about how this was one of the first cases since the war dealing with this subject matter; and how it really did change how we perceived the theft and returning of these cultural artifacts. Also, as was so eloquently said in the film, about the importance of appreciating and studying and understanding these things. That's why it matters. The people in Denison that I had just talked to casually before I embarked on the project would hem and haw and say, "Yeah, we know it wasn't great, but it was really incredible to see these items." I loved exploring why it really was important that the objects were returned and why this case was so important.

Q SF: The local people *did* see the items over a period of time. It's not like they were hidden in some basement. In fact, there were rumors about how they were used.

A CH: They did, but I couldn't get anyone to say that on camera. Some people would say, "Oh, I never saw them"; other people would say, "I saw them all the time." There's a saying in Texas, "The higher the hair, the closer to god." Women have big hair, and women told me that they had tried the ivory comb in their hair. Which is incredible, but nobody would tell me that on camera. Things like that don't come through Denison very often. I heard another story that no one would talk about on camera, that after Joe passed away, the family had a yard sale and offered the Quedlinburg books for $50, but there were no takers. Then they approached a dealer, and it kind of got passed up the chain, and ended up in New York, where people were actually knowledgeable and realized the significance, and also that it was stolen.

Q SF: Did they think that the jewels were fake? The jewels alone, even if you don't know that these are valuable manuscripts, are worth a lot.

A CH: Yes, and, in fact, Chuck Little can probably comment on this more, I have been told that some of the items that they thought were valuable were in fact plastic, like a lighter that they thought was ivory?

A TK: When we got to Texas, they said, "Oh, we've got one thing you're just going to love; it's just fantastic." It was an ivory box a little bit larger than a cigarette box, and it had a space inside that was a little tight for a cigarette case. It was clearly made by machine and was a 360 degree carving of figures. It was actually shown in the film. We

[1] Lt. Col. Paul Danahy took the tapestry in 1945. Prior to WWII, it belonged to a Munich art gallery, whose heirs did not believe it was part of a forced sale. The decision was made to give the work to the Bavarian Museum, and it was formally returned to Germany on December 16, 2016. The story is part of a documentary series *Hunting Nazi Treasures.*

called it the Rice Krispie, because it looked like a Rice Krispie Treat. But it was not from Quedlinburg, and it was obviously machine-cut, so it was not that interesting to us.

Q SF: Cassie, I know I'm putting you on the spot, but, is there anything you're allowed to say to us about the two missing works and your cryptic ending in the film? We've chatted a little bit about this.

A CH: I will say that Willi Korte came up to me at the premiere of the film and said, "So, you didn't do any better than me." It would have been such a great reveal if I had found the two objects. Who knows what the truth is and how much you believe what you are told in the film by some of the family. The more elaborate version of the story of the missing *Reliquary Cross* was that it had blue stones, and that this part of the United States is very Southern Baptist, and so the family thought, "Why do we want this Catholic thing?" They thought it was American flag-themed because they thought it had red, white and blue stones, and, well, I don't want this thing. Who knows if it's believable that it was donated, but, of the other object – the carved rock crystal – the more valuable one that you spoke of, I was told by several people, "I thought that thing was a paperweight," and that it may have been stolen by one of Joe Tom's boyfriends. That was the most plausible story I heard, but I did contact a few people who told me to never call them again. I hope it will turn up.

SF: The bottom line is that these two objects – the *Reliquary Cross* and carved rock crystal – may still be in that general area, if, in fact, they were given to a friend or a neighbor.

TK: A good hunch.

CH: Yes, that's a hunch.

SF: Maybe eventually there will be a Part Two to this program. I'd love to see the reveal.

AUDIENCE QUESTIONS

Q: I have questions about the two characters – Willi Korte and Joe Tom Meador – and what happened to them. How did Willi Korte live while he was doing all of this research, and what happened to him?

A SF: He's still around.

Q: My other question is about the character of Meador himself, and what about the other stuff he stole? It's tantalizing in the movie, and the reactions of his family confuse me enormously. What happened to him? Where's the other stuff? And how did he have a good reputation if he was court-martialed?

A TK: I've worked with Willi for 30 years, and I've wondered the same thing myself. He did get a nice settlement from the German government that allowed him to buy a house, but, otherwise, I don't know. He never found that gold and silver from his family. We have done a number of cases together, but it's something of a mystery how he gets by. You asked about the other objects, which raises interesting questions. After the Meador family fired their attorney, Torigian, they hired a real lawyer, and, of course, he had to know that he was in possession of stolen property; he just didn't know where it was stolen from. There were two small Bibles of fairly low value, and Willi Korte actually traced them to some elderly fellows in France, but they didn't particularly want them back or want to do anything about them. They were low value; nobody did anything about it. My own theory, by the way, on the two missing objects is that either they were given to the boyfriends, which is consistent with what we know, or they were sold into the local market, to a dealer in the local market. What we do know is that after Joe Tom Meador died in 1980, his brother and sister went around to dealers to figure out how to market the Quedlinburg material, and the one thing they learned was that the manuscripts were the easier sell. So the other objects got put in the

SHARON FLESCHER = SF
CHARLES T. LITTLE = CL
THOMAS R. KLINE = TK
CASSIE HAY = CH

bank and they focused on the manuscripts, which is why they were taken to Switzerland.

Q: How did Joe Meador's letters come to light, the ones where he confesses?

A CH: The story I heard was that a local gentleman in town who was of German heritage, who had been renting a house from the Meadors, found a box of letters in the garage. But he didn't want to come forward when the case first started because it's a town of 1,200 people. In fact, I couldn't get anyone to talk on camera about this gentleman, because they either hated him with the fire of 1,000 suns or they felt bad for him. It's a very small community. I was told by the local bed and breakfast owner who was friends with him, who, I guess, introduced him to Willi Korte, that his conscience got the better of him, and later he came out. Willi apparently said, "You know this could have been really helpful."

Q SF: Did he give the letters to Willi Korte?

A TK: From what I understand, he did.

CH: Yes. And the family is still very upset. They came to the screening in Dallas and were upset because they never got the letters back from the attorney. I guess they've been entered into evidence and are probably in Paris, Texas, or somewhere, I'm not sure where. An interesting turn of events.

SF: So the government just keeps them? I don't quite understand.

TK: I assumed that the government would give them back. …

Q: When these pieces were offered to the dealers, and Christie's, what did they say when they refused them? "This stuff is nice, but we don't really deal in stolen art?" Were these dealers ever interviewed?

A TK: With regard to the manuscripts, we talked to Roland Folter, as Willi described in the movie, who was the director of H. P. Kraus Rare Books in New York, and of German descent. Not long before this, there had been a case involving a Richard the Lionheart manuscript that had been sold for $25 million or something like that. I believe they felt that they could work a repatriation of some kind and get a finder's fee. I don't think Folter felt he was doing anything wrong. Eventually, he told Willi where to find the objects.

Q: I worked at the Getty Museum before law school, so I have some interest in the subject. I'm curious as to how other objects from the Medieval Period, which may have a 20th-century spoils context, are described when exhibited in a museum.

A CL: Some of these objects take on historical memory, if you want to call it that, because of their association with places or people of historical significance. The Quedlinburg pieces, which we're talking about here, date to both the 9th and 10th centuries and also from the 12th and 13th centuries. They clearly had powerful auras of significance even at that time. Of course, once they're in a museum context 1,000 years later, that has been more or less erased, and it's very hard to reconstruct, except for what we have from historical documents. In this case, we're in a good position of having some inventory information and historical context for them, and that aids tremendously in revitalizing their historic significance.

SF: I think that's a good way to end. I hope you agree that this was a really interesting movie and discussion. Thank you all for coming; thanks to our speakers as well.

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SCENES FROM AN IFAR EVENING

Cassie Hay.

Left to right: Virgilia Klein, IFAR Board Member, Thomas Kline, Lawrence Kaye, and Joan Kaye.

Sharon Flescher, IFAR's Executive Director, and Charles Stuckey.

Beatrice Fekula (left) and Wendy Lindstrom.

Nancy and Charles (Chuck) Little.

Left to right: Cassie Hay, Peter Barnet, IFAR Art Advisory Council Member, and Cynthia Hahn.

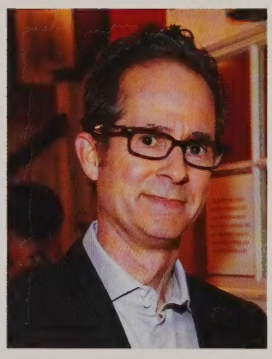
Left to right: Giosetta Capriati, Samuel Sachs II, IFAR Board Member, and Beth Sachs.

Deirdre Stam (left) and Elizabeth A. R. Brown.

THE QUEDLINBURG TREASURES

The medievalists, left to right: Elizabeth A. R. Brown, Ralph S. Brown, Jr., Peter Barnet, Cynthia Hahn, William M. Voelkle, and Chuck Little.

Helen Jessup (left) and Karen Orenstein.



Robert McDonald Parker.

Caroline Lowndes (left) and Harrison Jackson.

John Kelly, Madelaine Hartman, and Cassie Hay.

Thomas Kline and David D'Arcy.

Credit for these photos and all other images of speakers and guests at this program: Steven Tucker.

TWO NEW RESOURCES FOR STUDYING THE MATERIAL PROPERTIES OF ARTWORKS

JOYCE HILL STONER; KRISTIN DEGHETALDI; AND BRIAN BAADE*

The burgeoning interest in the material properties of works of art and the related field of technical art history continues unabated, providing a wealth of new insights into works of art, artists' working methods, and art history itself. Two new resources developed at the University of Delaware are among the latest research tools in this area that are being made available to the public; we wanted to bring them to the attention of *IFAR Journal* readers.

LEARNING TECHNICAL ART HISTORY THROUGH RECONSTRUCTIONS

The University of Delaware/Kress "Technical Art History Website" at https://www.artcons.udel.edu/outreach/kress features the art-historical, scientific, and art-material research necessary to create – and inform people about – historically accurate reconstructions of Old Master paintings. Such reconstructions are not the same as "copying" a painting, although much can be learned from both. Copying aims to emulate surface effects as they appear today, complete with degraded/yellowed varnish, overpaint, and discolored or faded pigments. A reconstruction of an historical painting, by contrast, aims to replicate the exact materials and layering structure used by the original artist to the degree possible. This means that the pigments and binders used to create the reconstruction must be of the same chemical and physical composition as those available to, for example, Giotto, Tintoretto, or El Greco.

Technical information derived from reconstructions, gained through the collaborative efforts of art historians, scientists, and conservators, can inform us about historical painting practices. Infrared reflectography can reveal an artist's underdrawing; x-radiographs can show how a panel was constructed; and analysis using x-ray fluorescence is often used to confirm the presence of certain pigments. Finally, cross-sectional "cut-aways" leave a visual record of the layers and processes used in the creation of a painting, allowing viewers to visually participate in each step of the painting process. The Technical Art History Website helps art historians, collectors, and others to understand each of these analytical techniques.

The intent of the site is to make the "principles and terminology of technical art history clear and accessible to the non-specialist and to strengthen the appreciation, interpretation, and preservation of Old Master paintings." It does this by providing multiple tiers of information and attractive visuals organized currently under three section headings: "Virtual Painting Reconstructions"; "Historical Materials and Techniques"; and "Examination Methods and Scientific Terms." But they are only the beginning. In the Examination Methods and Scientific Terms section, for example, there are subsections devoted to x-radiography, infrared reflectography, cross-sectional microscopy, x-ray fluorescence, and other methodologies. Each, in turn, contains abundant explanatory material – definitions, illustrations, examples of how the technology can be used, and links to related resources on other websites.

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* Kristen DeGhetaldi, Ph.D., is a paintings conservator at the University of Delaware, Paintings Conservations Department and a specialist in the development of oil painting in the early Renaissance period. She co-heads the University of Delaware's MITRA project.

* Brian Baade is an Assistant Professor, conservator, and art materials expert at the University of Delaware and co-head of the university's MITRA and Technical Art History websites.

In short, the material presented on the site is a testament to some of the fruitful collaborative efforts between art historians, conservators, and scientists, which have uncovered information related to historical painting materials and techniques, workshop practices, and attribution. Such reconstructions can help us to develop a newfound respect for the pigments that have been transformed into masterpieces. A bonus to users is that that the reconstructions featured on the website are available for workshops, symposia, lecture series, and other educational events.

MITRA

The second University of Delaware online resource, which answers technical questions from artists (and others), is the MITRA site, available at: https://www.artcons.udel.edu/mitra.

MITRA—Materials Information and Technical Resources for Artists—is an interactive forum that provides comprehensive, independent, and up-to-date information on art materials. The site is intended to serve as a guide for artists who are interested in learning about best practices as well as up-to-date scientific research on contemporary art materials and artistic techniques, but many of the topics would be of interest to other art professionals, students and collectors as well. Registration (required to ask a question, but not to view the site) is open to anyone. The objectivity of the forum makes it especially valuable. While specific brands and products may be mentioned in response to questions or serve as comparative examples, no specific brands are promoted.

MITRA discusses conservation topics such as guidance about contacting trained professionals and tips regarding exhibition, storage, transportation, and handling; in general, restoration materials or techniques are not covered. Forum topics range broadly and cover the alphabet, from "acrylic" and "alkyds" to "varnishes" and "watercolor."

Structured in a Q&A format, the questions and answers can be very specific and even specialized; some questions, however, are more general. A recent questioner, for example, asked whether it is ok to dilute water-soluble paints, other than watercolor – e.g., gouache, tempera, and ink – when painting on an absorbent support, like paper, and whether such works should be varnished. The answers, which are posted, come from one or more members of MITRA's Moderating Board, as well as users. In this case, the Moderator advised that over diluting water-based media affects stability, and stability "is tied to the absorbency of the support … the more 'open' the network of fibers in the paper support, the better off" the questioner would be. As to varnishing, that is "really an aesthetic decision."

MITRA is headed by Assistant Professor, conservator, and art materials expert, Brian Baade, and paintings conservator Dr. Kristin DeGhetaldi. The

FIGURE 1. Professor Brian Baade and Dr. Kristin DeGhetaldi of the University of Delaware with their reconstructed copy of Hans Memling's *St. Veronica* (from the National Gallery of Art, Washington, DC).

online forum is overseen by a Moderating Board comprised of more than two dozen established experts in the fields of art materials, art conservation, and materials science. A group of art materials manufacturers also provide MITRA with technical experts to answer questions relating to the products that they produce.

Currently, MITRA focuses on two-dimensional fine art practices, specifically painting, drawing/sketching, and to some extent, mural painting. As the forum continues to evolve, however, the intention is to add other areas of artistic practice, including (but not limited to) printmaking, sculpture/pottery, digital photography/design, and fiber art, at which point additional experts will be invited to join the Moderating Board to cover these topics. MITRA hopes to raise funds to broaden its scope and include the independent analysis, testing, and artificial aging of specific art materials. The results will provide further insight into the characterization and stability of commonly available art materials, information that will prove useful not only to artists, but to the conservation community and, by extension, to anyone interested in the material properties of art.

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CRI-ME-A-RIVER! CRIMEAN GOLD IN THE CROSSHAIRS OF GEOPOLITICS

EVELIEN CAMPFENS* AND IRINA TARSIS*

INTRODUCTION[1]

In February 2014, when the fourth President of Ukraine, Viktor Yanukovich, defected to Russia, an international art exhibition of thirty Andrei Rublev icons loaned to Kiev from Moscow's Central Museum of Ancient Russian Culture and Art was abruptly and prematurely closed,[2] and the loaned objects hastily returned to Moscow. Due to protests against the Yanukovich government that ultimately led to his ouster, it was deemed unsafe to continue to lend culturally significant Rublev icons to the capital of Ukraine. As fate would have it, the very same month, hundreds of Ukrainian objects — weapons, decorative objects, sculptures **(FIGS. 1-4)** — arrived at the Allard Pierson Museum in Amsterdam (the "AP Museum") for the second leg of a touring exhibition entitled *Crimea: The Golden Island in the Black Sea* **(FIG. 5).** Comprised of more than 500 archaeological objects, the loans came from five Ukrainian institutions, four of which are in Crimea.[3] Originally scheduled from February to May 2014, the loans were extended through August.[4]

"The AP Museum's dilemma—where should it return the borrowed materials: to the Ukrainian State that authorized the loan or to the individual Crimean institutions that lent their objects …?"

The political unrest that prompted Yanukovich to flee Ukraine was soon followed by Russian intervention in Crimea. Less than halfway through the AP Museum loan period, Crimea seceded from Ukraine and was annexed by the Russian Federation, an act disavowed by most members of the United Nations. This event unhinged the clear terms of the loan agreement, which stipulated an orderly return of the borrowed Ukrainian artifacts to the participating museums. Thus arose the AP Museum's dilemma. Where should it return the borrowed materials: to the Ukrainian State that authorized the loan or to the individual Crimean

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1 These gold materials are alternatively referred to as "Scythian Gold" or "Crimean Gold," a nuanced distinction akin to referencing antiquities removed from the Parthenon by Lord Elgin as either the "Parthenon Marbles" or the "Elgin Marbles." The Crimean objects are of multicultural origin, however, and are not only Scythian.

2 See, for example, "Old Russian icons are taken from Kiev exhibition ahead of schedule to escape the danger of damage," *Interfax Religion* (February 26, 2014).

3 The five museums are: The National Museum of History of Ukraine (Kiev), the Central Museum of Tavrida (Simferopl), the Kerch Historical and Cultural Preserve (Kerch), the Bakhchisaray History and Culture State Preserve of the Republic of Crimea (Bakhchisaray), and the National Preserve of Tauric Chersonesos (Sevastopol).

4 See 2.4, Amsterdam District Court, 14 December 2016, case number HA ZA 14-1179/ECLI:NL:RBAMS:2016:8264.

FIGURE 1. ***Sword and Scabbard*** (Scythian, 900 -100 BC). Gold. Loaned to the Allard Pierson Museum.

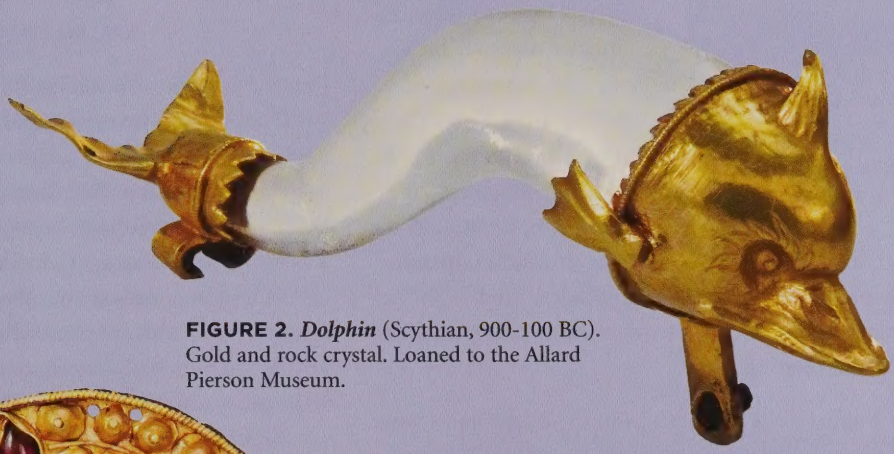

FIGURE 2. ***Dolphin*** (Scythian, 900-100 BC). Gold and rock crystal. Loaned to the Allard Pierson Museum.

FIGURE 3. ***Brooch*** (Scythian, 900-100 BC). Gold, gemstone and green glass. Loaned to the Allard Pierson Museum.

FIGURE 4. ***Helmet*** (Scythian, 900-100 BC). Gold. Loaned to the Allard Pierson Museum.

All Photos Courtesy AP Museum.

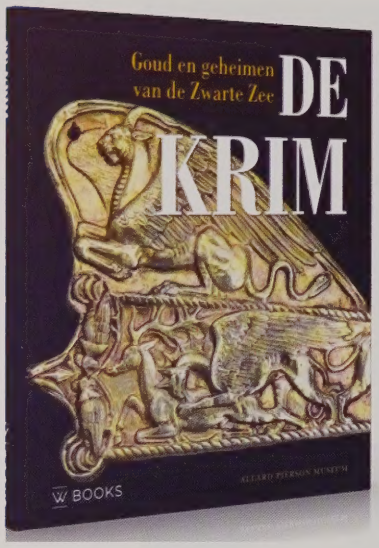

FIGURE 5. Cover of the Allard Pierson Museum's exhibition catalogue for *Crimea: The Golden Island in the Black Sea.*

institutions that lent their objects to the show?

The international dispute was further complicated by tragic events in the territory of Ukraine – the military operations, the devastation in war-affected areas, and the more than 1.4 million internally displaced persons. Not the least of these tragedies was the downing of a Malaysian jetliner flying over Ukraine on July 17, 2014. Having departed from Amsterdam on its way to Kuala Lumpur, the plane was shot down together with all 298 passengers and crew on board—many of whom were of Dutch nationality.[5]

In August 2014 the exhibition in Amsterdam came to an end, and 19 of the more than 500 borrowed artifacts were returned to the museum in Kiev, as these were not contested.[6] The objects from the four museums in Crimea, however, remained in Amsterdam due to opposing claims, and the standstill was brought to court in The Netherlands for adjudication.[7] Parties to the court case were the four Crimean museums (hereinafter the "Crimean Museums"), the State of Ukraine and the University of Amsterdam (acting on behalf of the AP Museum). Ultimately, on December 14, 2016, the Amsterdam District Court rendered a decision as to how the AP Museum ought to handle the Crimean loans: they would be returned to Ukraine.[8] In January 2017, that ruling was appealed. While the artifacts remain in storage in Amsterdam pending the outcome of the appeal, this case offers a wealth of political, legal and ethical dilemmas for experts in the field of cultural property disputes. The District Court verdict illustrates the central role of state authorities in the context of international art loans and the 1970 UNESCO Convention.

BACKGROUND

Present-day Ukraine declared its independence in 1991[9] following the collapse of the Union of Soviet Socialist Republics, a.k.a. the Soviet Union, a geopolitical experiment that lasted for 70 years. The history and cultural patrimony of Ukraine is, itself, a hotly contested subject, due in great part to the ever-changing borders and sovereignty of its different parts[10] **(FIG. 6).** It is telling that the national anthem begins with less than enthusiastic lyrics, "The glory and the freedom of Ukraine has not yet died/*Shche ne vmerly Ukrainy ni slava ni volya.*" Until the Mongolian invasion in the 13th century, Kievan Rus', with the seat of power in Kiev, was the center of East Slavic culture and the strongest of the Slavic principalities. Later, parts of present day Ukraine were dominated or annexed by the Kingdom of Poland, Duchy of Lithuania, Crimean Khanate, Ottoman Empire, Kingdom of Hungary, Russian Empire, and the Czechoslovak Republic. In the 20th century, Ukraine's formation was marked by multiple declarations of independence, including those in 1917, 1941, and 1990-91.

Ukraine's control over Crimea, a land mass situated on the coast of the Black Sea, arose relatively recently under peculiar circumstances. Like Ukraine, Crimea has changed hands as a strategically important asset since ancient times. Having

5 See S.C. Res. 2166, U.N. Doc. SC/11483 (July 21, 2014) and Draft S.C. Res., U.N. Doc. S/2015/562 (July 15, 2015) – vetoed by Russia – in relation to the downing of Malaysia Airlines flight MH17.

6 Nina Siegal, "Artifacts from Crimean Museums Are Held Hostage by Politics," *New York Times* (Aug 17, 2015).

7 For intervention by the Dutch State, see an earlier ruling in the case: 8 April 2015 [Amsterdam District Court, case number HA ZA 14-1179/ ECLI:NL:RBAMS:2015:2000]. At the same time, private activists were launching campaigns, such as one hosted on the website Change.org entitled "Return Scythian gold to Crimea! Laat het Scytisch gold terugkeren naar De Krim" to appeal to the court of public opinion for the desired outcome. The creator of the Change.org campaign sought to get 1,000 signatures to support the message of returning the Scythian gold to Crimea, but only managed to collect 535.

8 Cited *supra* fn 4.

9 "The Transfer of the Crimea to the Ukraine," *International Committee for Crimea* (July 2005), available at http://www.iccrimea.org/historical/crimeatransfer.html (last visited March 25, 2017).

10 Adam Taylor, "To understand Crimea, take a look back at its complicated history," *The Washington Post* (February 27, 2014).

at one point or another been controlled by the Greeks, the Persians, the Romans, the Byzantine Empire, and the Ottomans, Crimea was annexed in 1783 by the Russian Empire. Soon after the Empire's collapse following the 1917 Russian Revolution, Crimea became an autonomous republic. In 1945, it was made a province of the Russian Soviet Federative Socialist Republic (SFSR) within the Soviet Union.

Nine years later, in 1954, Nikita Khrushchev decreed a transfer of Crimea from the Russian SFSR to the Ukrainian SFSR for economic and geographic reasons, as the Crimean peninsula was "a natural extension of the southern Ukrainian steppes."[11] Ironically, the transfer aimed to bolster the brotherly love and friendship between Russians and Ukrainians, which, at the time, few could have anticipated would turn hostile. Nor could anyone have envisioned the collapse of the Soviet Union. In 1991, the Autonomous Republic of Crimea became a part of the newly independent Ukraine.

FIGURE 6. Map showing Ukraine and Crimea in relation to Russia.

In 1970, members of the United Nations signed a number of international treaties declaring the principles of friendly relations and cooperation among states, including the provision that a State shall not acquire territories of another Member State through the use of threats or force.[12] In 1994, Ukraine was granted assurance with the Treaty on the Non-Proliferation of Nuclear Weapons confirming the "unity and territorial integrity of Ukraine within its internationally recognized borders" in exchange for reduction and limitation of its nuclear arsenal and disarmament.[13]

THE SCYTHIANS

The Scythians were ancient nomadic peoples who inhabited the central Eurasian steppes from the 9th to 1st century BC.[14] Displaced by the Sarmatians starting in the 3rd century BC, they were forced to inhabit coastal areas of the Black Sea and Crimea. It was supposedly the Scythian king Saitaphernes who founded the new capital Neapolis Scythica near present-day Simferopol. The city was sacked in the 3rd century BC, leading to the extinction of late Scythian culture. In 9 AD, Ovid referred to the Black Sea as the "Scythian Sea."[15] Later dominant cultures in Crimea were influenced by the Scythians.

The Crimean peninsula, which is rich in archaeological sites, has many Scythian burial mounds, called kurgans. These contain weapons, jewelry, vessels for the afterlife, and numerous ceremonial objects. The first archaeological excavations of Scythian antiquities in Southern Russia and Ukraine date back to

11 *Bulletin of the Institute for the Study of the History and Culture of the USSR* (Munich), Vol. 1, no. 1, April 1954, pp. 30-33.

12 UN Resolution A/RES/25/2625. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Oct. 24, 1970).

13 UN General Assembly Resolution A/RES/68/263. Territorial integrity of Ukraine (Apr. 1, 2014); UN General Assembly Letter A/49/676. Letter dated 17 November 1994 from the Permanent Representative of Ukraine addressed to the Secretary-General (Nov. 17, 1994).

14 See, David Braund, *Scythians and Greeks: Cultural Interaction in Scythia, Athens and the Early Roman Empire* (Exeter: University of Exeter Press, 2007).

15 Renate Rolle, *The World of the Scythians* (University of California Press, 1st English ed., 1989), p. 134.

1763.[16] In Crimea, Paul Du Brux discovered a stone burial chamber in the early 19th century, the contents of which were transported to St. Petersburg.[17] In the Soviet Union, "excavations and archaeological expeditions [were] generally the province of the central institutions of the Academy of Science in the main cities in the Soviet republics," with "the centre for modern research into the Scythians [being] Kiev."[18]

THE EXHIBITION

In the early 2010s, museum administrators and curators in Germany, The Netherlands, and Ukraine began planning an international art exhibition to showcase Scythian, Greek, and Goth treasures and other objects from Crimea's rich history. The exhibition, *Crimea: The Golden Island in the Black Sea,* at the AP Museum would, as already noted, include more than 500 artifacts. Its alternate name, *The Crimea: Greeks, Scythians and Goths at the Black Sea,* better described the objects, which the AP Museum's January 2014 press release said "reveal the rich history of the peninsula colonized by the Greeks since the seventh century BC. The Crimea and the Black Sea were and remain an important crossroads between Europe and Asia." The loaned artifacts are testimony to the various civilizations the region has known. A Chinese lacquer box dating from the Han dynasty, for example, attests to Crimea's position as part of the Silk Road.[19]

LOAN AGREEMENTS AND EXPORT LICENSES

To arrange for the loan of the objects from Ukraine to Bonn (from July 2013) and to Amsterdam in 2014, agreements were finalized in the spring of 2013, months before any unrest in Kiev. The parties to the agreements were the representatives of the AP Museum and the Landesmuseum on one side, and their counterparts at the five Ukrainian museums – the one in Kiev and four in Crimea – on the other.[20] The loan agreements stipulate that the AP Museum would return the loaned materials to each of the five museums in a timely manner *"after the expiration of the term of the temporary storage for the purpose of demonstration."*[21]

The Crimean Museums rely on this stipulation to advance their claim for return of their artifacts to the museums. The interests of Ukraine surface in the loan agreements in the reference to the objects as part of the "Museum Fund of Ukraine" and a reminder that the parties *"realize that the exhibits of the exhibition are the property of Ukraine and world civilization and shall take all possible measures to avoid their loss and damage."*[22]

The Ukrainian executive branch of the government, not being a party to the agreements, approved the loans by signing export licenses in 2013 and an extension authorization in 2014.[23]

GEOPOLITICAL EVENTS 2014

The exhibition at the AP Museum coincided with unforeseen geopolitical events. The Amsterdam court summarized them as follows:

> "On 6 March 2014, the Autonomous Republic of Crimea (ARC) agreed on the secession from Ukraine and accession to the Russian Federation. On 16 March 2014, the ARC held a referendum and voters in Crimea were in favor of accession to the Russian Federation. On 18 March 2014 the ARC and Sevastopol became part of the Russian Federation."[24]

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16 Ellen D. Reeder and Esther Jacobson, *Scythian gold: treasures from ancient Ukraine* (Los Angeles County Museum of Art, Walters Art Gallery) (1999) and Pavel Dolukhanov, *The Early Slavs: Eastern Europe from the Initial Settlement to the Kievan Rus* (Routledge, 1st ed.)(June 27, 1996).

17 *A Dictionary of Archaeology.* Edited by Ian Shaw and Robert Jameson (London: Blackwell Publishers, 2002).

18 Rolle, *op. cit.,* p. 9.

19 Allard Pierson Museum Series, *De Krim: Goud en geheimen van de Zwarte Zee* (W Books, 2014), p. 95.

20 Rechtbank Amsterdam, [Amsterdam District Court], C/13/577586 / HA ZA 14-1179 [ECLI:NL:RBAMS:2016:8264] 14 December 2016, hereafter "Verdict."

21 *Id.* Verdict at 2.2 and 2.8.

22 *Id.* Verdict 3.4; Art. 7.1 of the Loan Agreements.

23 *Id.* Verdict at 2.3 and 2.4.

24 *Id.* Verdict 2.5.

The secession of Crimea, however, was not recognized by most other nation states, including The Netherlands.[25] More importantly, Ukraine took the position that Crimea was temporarily occupied rather that permanently annexed.[26] The United States and the European Union placed multiple economic sanctions on Russia "for violating the sovereignty and territorial integrity of Ukraine."[27]

COMPETING CLAIMS

After the exhibition period ended, the AP Museum was confronted with two competing demands for return of the objects: Ukraine on the one hand and the Crimean Museums on the other. As early as March 2014, the four Crimean museums began insisting in writing that the AP Museum return all objects to the lending institutions as stipulated in the loan agreements.[28] That same month, the Ministry of Culture of Ukraine requested an early return of the Crimean treasures to the State of Ukraine, saying that Ukraine was working on the return of all artifacts that belonged to the State Museum Fund as being "national treasures and an integral part of the cultural heritage of Ukraine protected by law."[29]

By July 2014, the AP Museum suspended its obligations under the loan agreement to return the objects to the four Crimean museums, and, instead, adopted a position that as a bailee it had no interest in the Crimean treasures and simply wanted to return the artifacts to the entitled party, but that it did not want to be held liable for breach of contract or damages claimed by the other party.[30] This position was consistent with the AP Museum's decision to return objects that had been borrowed from the National Museum of History of Ukraine in Kiev after the termination of the exhibition on the 31st of August, 2014.[31]

As a resolution could not be reached,[32] the four Crimean museums initiated legal action against the AP Museum and filed suit in the District Court of Amsterdam on November 19, 2014. Ukraine's request to intervene was granted by the Amsterdam District Court a few months later, on April 8.[33]

At that point, the Dutch State also tried to intervene, requesting to be admitted as a party to the litigation in order to prevent the Crimean treasures from being returned to the Crimean Museums. This request was denied on grounds that the Dutch State lacked specific interest in the outcome.[34]

Despite speculations to the contrary, the Russian Federation did not enter the debate.[35]

IMMUNITY FROM SEIZURE

One may ask, were there no immunity from seizure arrangements with the Dutch State? In The

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25 Resolutions by the Security Council stating the illegality of the events were vetoed by Russia; G.A. Res. 68/262, U.N. Doc. A/RES/68/262 (March 27, 2014) underlines the Territorial integrity of Ukraine.

26 Law of Ukraine "On Securing the Rights and Freedoms of Citizens and Legal Regime on the Temporarily Occupied Territory of Ukraine," No. 1207-VII (April 15, 2014). See also M. Nudelman, "Who Owns the Scythian Gold? The Legal and Moral Implications of Ukraine and Crimea's Cultural Dispute," *Fordham International Law Journal,* Vol. 38, 2016, pp. 1261-1297, at 1276, 1283.

27 Ukraine and Russia Sanctions, U.S. Department of State, Department of the Treasury, Executive Order 13660, March 6, 2014, and "EU sanctions against Russia over Ukraine crisis," *European Union Newsroom,* Highlights.

28 Verdict 2.9.

29 Verdict 2.6.

30 Verdict 2.10, 3.7, 3.8.

31 Verdict 2.11.

32 Two meetings were held in Amsterdam in September and October of 2014: one between representatives of the Allard Pierson and the Crimean Museums, and another meeting between representatives of the Allard Pierson and government officials from Ukraine. Verdict 2.12.

33 Rechtbank Amsterdam, [Amsterdam District Court] [ECLI:NL:RBAMS:2015:2000], 8 April 2015.

34 *Ibid.* 4.6 and 5.4. According to the Court, the interest of the Dutch State '"to see that its international obligations would not be jeopardized'" could be better served by the right to a hearing as provided for by Art. 44 Rv [Dutch Code of Civil Procedure].

35 Given the fact that Russian museums contain collections that are not always endemic to the geographic contours of the country, and, more specifically, include hundreds of valuable Ukrainian artifacts displaced in the course of the early 20th century, any argument in favor of returning cultural objects to the place of origin would surely backfire if made by the Russian Federation. See, for example, the 1998 report about artifacts lent to Moscow from Kiev for a 1938 exhibition where multiple objects from the St. Michael's Golden-Domed Monastery failed to be returned, one of which is currently on display at the Tretyakov State Gallery in Moscow. Source: S. Kot, Ui. Koreniuk, and T. Sebta, *"Regarding restitution to Ukraine cultural heritage from Mikhailovskii Zlatoverkovyi Sober presently located in museums of the Russian Federation"* (Kiev, 1998).

Netherlands, this can be arranged by so-called "letters of comfort," documents issued by the Ministry of Foreign Affairs that aim to provide some degree of immunity from seizure for cultural property from foreign states in the event of international loans. More specifically, such letters explain that, "the Government of The Netherlands will do everything that is legally within its power to ensure that the art object loaned by the foreign State will not be encumbered at any time while it is located on Dutch territory."[36] In the present case, such letters appear to have been issued; however, they did not play any role, as the objects were never seized. Although such "letters of comfort" may provide (some) protection, they do not provide immunity from lawsuits, at least not in the Dutch situation.[37]

THE LEGAL ARGUMENTS AND COURT RULING

The opposing parties based their claims for the return of the objects on: (i) obligations stated in the loan agreements; on (ii) ownership/title; on (iii) the 1970 UNESCO Convention[38]; and on (iv) ethical principles—existing cultural-historical links and the integrity of museum collections.

Ukraine claimed legal ownership over the loaned objects on the basis of Ukrainian law, which deems archaeological objects "state property." It relied on the 1970 UNESCO Convention for the international return claim. The Crimean Museums based their claim for the return of the objects on the loan agreement and on their rights of operational management. In their view, this right is stronger than the "bare" ownership rights Ukraine may have, taking into account the close cultural-historical ties of the objects with the territory and people of Crimea, as well as the principle of the integrity of museum collections. The Crimean institutions, in other words, argued that they are the "genuine home" of the archaeological findings as they were discovered and preserved there over time.

> "The AP Museum suspended its obligations under the loan agreement to return the objects to the four Crimean museums. … The museums filed suit in the District Court of Amsterdam on November 19, 2014. Ukraine's request to intervene was granted … a few months later."

The three-judge panel of the civil chamber of the Amsterdam District Court needed a little over two years to render its verdict.[39] On December 14, 2016, the Court held in favor of Ukraine and against the Crimean Museums. The following issues were addressed in the verdict:

- The obligations imposed by the loan agreement
- Who is legally entitled to the collection(s)?
- How does the 1970 UNESCO Convention apply?

Issue 1: The Loan Agreements

One of the questions presented to the Court was whether the AP Museum was bound by obligations in the loan agreement as to the *"timely return of the exhibits to the museum"* given the change in circumstances in Ukraine. The loan agreements clearly spelled out an obligation to return the objects to their specific lending museums. That said, the choice of law clause in the loan agreement made Ukrainian law determinative, and according to Ukrainian Law article 652 CCU, any agreement can be terminated by the contracting parties in case of a "material change in circumstances."[40]

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36 The Dutch system follows the 2004 U.N. *Convention on Jurisdictional Immunities of States and their Property,* under which State-owned cultural property enjoys immunity from measures of constraint. See Cultural Heritage Inspectorate, Ministry of Education, Culture and Science, (acc. 21 April 2017.) https://english.erfgoedinspectie.nl/cultural-goods/temporary-import-of-cultural-goods-for-exhibitions-in-heritage-institutions.

37 Cf. a United States case, *Malewicz v. City of Amsterdam,* 517 F. Supp. 2d 322 (D.C. 2007), ruling that foreign states lending art to the United States were not *per se* immune from jurisdiction, even if the loaned objects were precluded from seizure. In 2016, however, President Obama signed into law the The Foreign Cultural Exchange Jurisdictional Immunity Clarification Act (FCEJCA), or Art Museum Amendment, narrowing the expropriation exception in the FSIA to provide greater immunity from suit for foreign states lending artworks to the United States for temporary exhibit.

38 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970.

39 Starting from the writ of 19 November 2014 (and headed by Mr. R.A. Dudok van Heel).

40 Verdict 4.24, 4.25.

A similar provision can be found in Dutch law.

The Amsterdam court ruled that the Crimean annexation was a "material change in circumstances," a change justifying the termination of the AP Museum's contractual obligations.[41] The court dissolved the loan agreement and found that the AP Museum was within its rights *not* to return the artifacts to the Crimean Museums.

Issue 2: Legal Title

On the matter of legal title to the objects, there is, as expected, a difference of opinion between Ukraine and the Crimean Museums, despite the fact that it is uncontested that the loaned artifacts are listed in the museum registry of Ukraine. Ukraine bases its claim on a February 2, 2000 Decree designating the collections of the four Crimean museums as Ukrainian State property.[42] More generally, Ukraine invoked Ukrainian laws vesting ownership of all archaeological finds in the state; for example, the 2004 Law of Ukraine on Protection of Archaeological Heritage.[43] Underlining this argument is the premise that the secession of Crimea is irrelevant to the legal status of Ukrainian-registered cultural objects.

The Crimean Museums, on the other hand, argue that the matter is more complex; the Autonomous Republic of Crimea (ARC), not Ukraine, should be considered the owner of the majority of the loaned objects.[44] The ARC has had autonomous status since the foundation of Ukraine in the early 1990s. Moreover, according to the 1996 version of the Ukrainian Constitution, ARC has rights to autonomously administer its possessions and keep and use its historical objects. Given that three of the four Crimean Museums were apparently founded by ARC independently, the Crimean Museums believe the ARC should be considered the legal owner of the objects of all but the Sevastopol museum, which was founded by Ukraine. Further, they maintain that the "bare ownership right" to the objects by Ukraine is superseded by the superior rights of the Crimean Museums due to their rights of "operational management." Under the previous version of the Ukrainian law, and until May 2014, the Crimean Museums enjoyed certain *(in rem)* rights known as "operational management rights" to the objects in their care. Following the annexation of Crimea, the Ukrainian Ministry of Culture transferred the operational management right in Crimean-based Ukrainian national patrimony to the National Historical Museum of Ukraine.[45] The Crimean Museums contest the legality of this transfer.[46]

The Amsterdam Court in its December ruling did not reach a decision regarding the *ownership* of the Crimean treasures. Instead, it limited itself to the question as to whom the AP Museum was obliged to return the objects on the basis of the Dutch Heritage Act 2016 – the law implementing the 1970 UNESCO Convention in the Netherlands.[47] Questions as to ownership, on the other hand, should be decided, according to the Verdict, upon the return of cultural objects to the State from which they came, as will be elaborated upon below.[48]

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41 Verdict 4.27.

42 Decree on the basis of Art. 15 para. 3 of the Law of Ukraine on Museum and Museum Affairs of 29 June 1995. See: Verdict, 3.4

43 Under the heading of "RIGHTS AND DUTIES OF ARCHAEOLOGICAL HERITAGE RESEARCHERS" Article 18 reads: "Finds, received in the result of archaeological research (immovable and movable items, which were connected with the object of archaeological heritage and discovered and documented during archaeological research) are the [sic] state property. Law of Ukraine on Protection of Archaeological Heritage *(Vidomosti of Verkhovna Rada (VVR),* 2004, No. 26, p. 361), UNESCO Database of National Cultural Heritage Laws: http://www.unesco.org/culture/natlaws. Moreover, although not mentioned in the 2016 verdict, the *Law of Ukraine on Protection of Cultural Heritage of 2000,* Art. 17, clarifies that all "archaeological finds" are state property. *(Vidomosti of Verkhovna Rada (VVR),* 2000, No. 39, p. 333); See: UNESCO Database of National Cultural Heritage Laws (acc. April 1, 2017).

44 Verdict 3.2.

45 Per Order No. 292 *On Transfer of Museum Objects to the National Historical Museum of Ukraine* of May 13, 2014. Verdict 2.7.

46 Verdict 3.2.

47 The Dutch Heritage Act 2016 (officially "Act of December 9, 2015, Relating to the Combining and Amendment of Rules Regarding Cultural Heritage"), supersedes the earlier Implementation Act of 2007. It applies from 1 July 2016 on; it has not changed regarding the relevant provisions of the Verdict. Available on IFAR's Art Law & Cultural Property Database. www.ifar.org/art_law.php. Hereafter "Dutch Heritage Act."

48 The court rules that on the basis of Art. 1012 RV (Dutch Code of Civil Procedure) legal ownership of a cultural object shall be determined upon return of the cultural object in the country that requested its return by its national laws. Verdict. 4.17.

Not insignificantly, the Russian legislators passed a new law on February 4, 2015, which states that museum collections in Crimea are to be included in the national museum registry of the Russian Federation.[49]

Issue 3: The 1970 UNESCO Convention

Ukraine as well as the Netherlands (and Russia) are State Parties to the 1970 UNESCO Convention and implemented its principles, albeit in different ways. The Convention is non-self executing; it needs to be implemented in domestic law, which in the Netherlands took effect with the *Heritage Act.*

The aim of the 1970 UNESCO Convention, to which 132 countries belong as of June 2017, was to attain a minimum level of uniform protection against the illicit trafficking of cultural objects and international cooperation and solidarity in doing so.[50] Its rationale, stated in Article 2, is the recognition of the "illicit import, export and transfer of ownership of cultural property" as "one of the main causes of the impoverishment of the cultural heritage of the countries of origin".[51] The Convention's pillars are:

- Adopting protective measures, such as creating national inventories of cultural property (Art. 5). (The Museum Fund in Ukraine, for example);
- Control of the movement of cultural property through a system of export certificates and laws prohibiting the import of stolen objects (Art. 6-9). (As Ukraine issued temporary export licenses with regard to the Crimean treasures.)
- The interstate return of illicitly transferred cultural property (Art. 7).

UNLAWFUL TRANSFER?

The provisions of the 1970 UNESCO Convention are notoriously vague and various interpretations can co-exist, such as what exactly falls under the definition of "illicit" import, export or transfer.[52] This is important, as the return request of Ukraine was based on the argument that the unlawfulness of the situation is created by the non-return after expiration of the export licenses, while the way the objects entered The Netherlands was perfectly legal.

Under Ukraine's implementing legislation for the UNESCO Convention, the expiration of an export license is deemed "illicit."[53] The applicable provisions of the Dutch Heritage Act, however, (Article 6.7) make the illicit *import* the sole prerequisite for return: "The return of cultural property imported into The Netherlands in breach of the prohibition as referred to in Section 6.3 may be claimed (...) by proceedings brought by the State Party from which the property originates or by the party with valid title to such property."[54]

In its December 2016 decision, the Amsterdam District court concluded on this point that the term "illicit import" in the Dutch Heritage Act should be interpreted broadly and in such a way as to include a situation where the illegality is created by the non-return after the expiration of the loan contract or export licences. To come to this interpretation, the court argued that to exclude a situation like the present would be contrary to the aim of the 1970

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49 Russian Federal Law (Feb. 12, 2015) No. 9-FZ "On regulation of relations in the matter of culture and tourism as related to the annexation of the Republic of Crimea to the Russian Federation. ..."

50 Irini A. Stamatoudi, *Cultural Property Law and Restitution: A Commentary to International Conventions and European Union Law* 33 (Edward Elgar Publ., 2011).

51 UNESCO 1970, Art. 2.

52 E.g. P. J. O'Keefe, *Commentary on the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (Leicester Institute of Art and Law, 2007). I. Stamatoudi, *op. cit.*, 2011.

53 Law of Ukraine on Exportation, importation and restitution of cultural values, Art. 23 (Vidomosti Verkhovna Rada (...), 1999, No. 48, p. 405): "Those cultural values, which were temporarily exported from Ukraine and were not returned in the period provided by the contract, are considered unlawfully exported."

54 Act of 9 December 2015 Relating to the Combining and Amendment of Rules Regarding Cultural Heritage (Dutch Heritage Act) (December 9, 2015). Article 6.7. Article 6.3 reads: "It is prohibited to import into The Netherlands cultural property which: a) has been removed from the territory of a State Party and is in breach of the provisions adopted by that State Party, in accordance with the objectives of the 1970 UNESCO Convention in respect of the export of cultural property from that State Party or the transfer of ownership of cultural property, or b) has been unlawfully appropriated in a State Party.

Convention.[55] In addition, the court drew inspiration from the 2014 European Union Directive on unlawfully removed cultural objects,[56] and the 1995 UNIDROIT Convention,[57] both of which explicitly include in their definition of "unlawfully removed" cultural objects, objects that were "not returned at the end of a period of lawful temporary removal."

In doing so the court confirmed – although implicitly[58] – the view that the *lex originis* should be decisive: the country of origin's domestic law determines the legal status of the object; "illicit *export*" means that the object should be seen as "illicitly *imported*" in other countries, creating a sufficient basis for return claims under the UNESCO system.[59] In the present case, this means that the non-return of the artifacts after the lapse of the loan agreement – illicit export under Ukrainian law – creates a situation of "illicit import" within the meaning of the Dutch Heritage Act.

RETURN CLAIM?

The next question – of crucial importance – is who can rightfully claim the return of cultural objects that are unlawfully retained in the Netherlands? On this point, Article 6.7 of the Dutch Heritage Act states that return may be claimed by "the State Party from which the property originates *or* by the party with valid title to such property," seemingly facilitating return claims by non-State Parties. The Dutch court, however, dismissed this view, ruling that only States can claim return of cultural objects; the question of title and ownership should be decided upon *after* their return in Ukraine. For this, the court invoked Article 1012 of the Dutch Code of Civil Procedure – implementing the 2014 EU Directive – stating that "ownership of the cultural object that is subject to a return request by a State Party will be decided upon after return by the national laws of the state that claimed for its return."[60]

Thus, according to the court, only the claim for the return of the objects by the State of Ukraine can be acknowledged and claims by non-state rights-holders, like museums or the Autonomous Republic of Crimea, do not have standing.[61] In other words, that the system of international return of illicitly transferred cultural objects as envisaged by the 1970 UNESCO Convention is an interstate affair based on cooperation between national authorities and aimed at the protection of *national* collections.

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55 See Art. 2, *supra*. Not that the 1970 UNESCO itself provides much clarity by stating in Article 7 in very general terms that "State Parties undertake, at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported,[…].". The court relied, however, for the interpretation of the 1970 Convention on the scholarly opinion of P.J. O'Keefe (2007), *supra,* and L.P.C. Belder's doctoral thesis "The Legal protection of cultural heritage in international law and its implementation in Dutch Law" (2014, not published).

56 Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 relating to the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012, states in Art. 2: "unlawfully removed from the territory of a Member State" means: (a) removed from the territory of a Member State in breach of its rules on the protection of national treasures or in breach of Regulation (EC) No 116/2009; or (b) not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal.

57 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects Art. 5.2 (2), June 24, 1995 "A cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration, under a permit issued according to its law regulating its export for the purpose of protecting its cultural heritage and not returned in accordance with the terms of that permit shall be deemed to have been illegally exported." The Netherlands signed but did not ratify the Convention; Ukraine is not a signatory.

58 The verdict at 4.15 reads "(I)t is not without importance that according to Ukrainian law […] objects will be deemed illegally exported if they have not returned after the lapse of time limits mentioned in export licenses" …

59 This seems, at present, a generally accepted view: *e.g.* P.J. O'Keefe (2007), I. Stamatoudi (2011); and is in line with the Operational Guidelines for the implementation of the 1970 Convention, adopted at the third meeting of the States Parties on 18-20 May 2015 (Resolution (nr. 26).

60 Art. 1012 Rv [Dutch Code of Civil Procedure] implements Art. 13 of the 2014 EU Regulation discussed above [*NB* the verdict states Art. 12 which must be a mistake]. However, it differs slightly from the EU provision that reads: "Ownership of the cultural object after return shall be governed by the law of the requesting Member State."

61 Verdict 4.8, 4.16, 4.17.

THE VERDICT

In its 14 December 2016 decision **(FIG. 7)**, the District Court sided with Ukraine and ruled the following:

- the loan agreement between the Crimean Museums and the AP Museum is dissolved;
- the AP Museum shall transfer the loaned objects to the National Historical Museum of Ukraine in Kiev in its capacity as custodian of the Crimean objects designated by the Ukraine State;
- pending an appeal, the artifacts shall remain in storage at the AP Museum;
- Ukraine shall pay storage and insurance costs to the AP Museum.[62]

As expected, and as noted above, in January 2017, the Crimean Museums filed an appeal.[63]

ROAD(S) NOT TAKEN

The Dutch verdict makes clear that the legal framework, based on the 1970 UNESCO Convention, does not address issues that are at the heart of the present case, such as partition of a country or disconnect between the territorial or cultural-historical link of the object to (groups of) people(s), as *that* legal framework is based on the notion that the national state is the key "rights holder" to cultural heritage where it concerns claims for return. Most of the time, this will work efficiently, but, sometimes, it may be to the detriment of other interests, like groups who do not feel (anymore) represented by their national government. Interestingly, and perhaps exactly because of this "gap" in the traditional model, a parallel system of soft-law instruments signals another trend, of acknowledgement of (group or individual) rights of non-state actors to their cultural heritage.[64]

"In its 14 December 2016 decision, the District Court sided with Ukraine. As expected, … in January 2017, the Crimean Museums filed an appeal."

Whether litigation in the present case can lead to a lasting or "fair" solution remains to be seen. Within the context of cultural heritage claims, adversarial litigation procedures are generally considered a last option, only to be entered into after good-faith negotiations and Alternative Dispute Resolution methods are exhausted, and precisely *because* of the non-legal (cultural, historical and other) aspects that are at stake. On this point, the "Operational Guidelines" to the 1970 UNESCO Convention, adopted in May 2015, explain that:

> *"The Convention does not attempt to establish priorities where more than one State may regard a cultural object as part of its cultural heritage. Competing claims to such items, if they cannot be settled by negotiations between the States or their relevant institutions … should be regulated by out of court resolution mechanisms, such as mediation … or good offices, or by arbitration. There is no strong tradition for the judicial settlement of such differences in cultural matters. State practice would suggest a preference for mechanisms that allow consideration for legal, as well as cultural, historical and other relevant factors."*[65]

A preference for a non-formalistic approach can also be found in the proposal for "Guiding Principles Relating to the Succession of States in respect of Tangible Cultural Heritage".[66] If not directly, then surely of indirect interest to the present case, this proposal by scholar Andrzej Jakubowski promotes equitable principles and alternative methods for dispute resolution regarding cultural heritage

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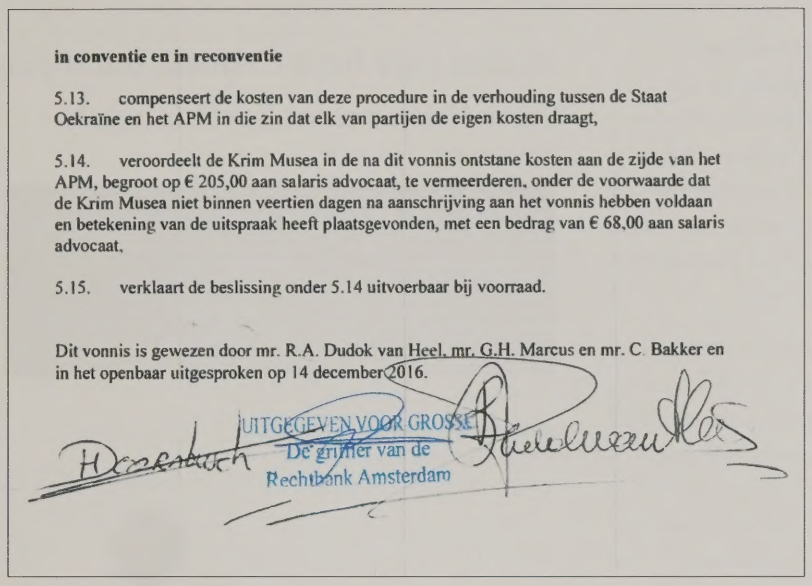
62 Verdict, 4.20 and 5.

63 *Crimean Museums Appeal Court Ruling Returning Scythian Gold To Kiev,* Radio Free Europe Radio Liberty (Jan. 26, 2017) confirmed by attorney G.J. van den Bergh by email to the author.

64 E.g. rights of indigenous peoples to their lost cultural heritage (rights based on restitution provisions in the *United Nations Declaration on the Rights of Indigenous Peoples* (UN GA Res. 61/295, September 2007), and rights of victims of the Holocaust to works of art confiscated by national government agents based on the so-called *Washington Conference Principles* of 1998, promoting "fair and just" solutions and ADR methods for solving ownership issues, reproduced in E. Campfens (ed.) *Fair and Just Solutions, Alternatives to litigation in Nazi-looted Art Disputes: Status Quo and New Developments,* (The Hague Eleven Publishers), (2014).

65 The Operational Guidelines for the implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970), adopted at the third meeting of the States Parties on 18-20 May 2015 (Resolution3.MSP.11), nr. 26. In the same sense, the International Law Association advises ADR methods for resolving cultural heritage disputes in its "Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material," reproduced by J.A.R. Nafziger in an article by that name in: 8 Chi. J. Int'l L. 147 (2007-2008).

66 A. Jakubowski, *State Succession in Cultural Property* (Oxford University Press) (August 4, 2015), Annex.



in conventie en in reconventie

5.13. compenseert de kosten van deze procedure in de verhouding tussen de Staat Oekraïne en het APM in die zin dat elk van partijen de eigen kosten draagt,

5.14. veroordeelt de Krim Musea in de na dit vonnis ontstane kosten aan de zijde van het APM, begroot op € 205,00 aan salaris advocaat, te vermeerderen, onder de voorwaarde dat de Krim Musea niet binnen veertien dagen na aanschrijving aan het vonnis hebben voldaan en betekening van de uitspraak heeft plaatsgevonden, met een bedrag van € 68,00 aan salaris advocaat,

5.15. verklaart de beslissing onder 5.14 uitvoerbaar bij voorraad.

Dit vonnis is gewezen door mr. R.A. Dudok van Heel, mr. G.H. Marcus en mr. C. Bakker en in het openbaar uitgesproken op 14 december 2016.

UITGEGEVEN VOOR GROSSE
De griffier van de
Rechtbank Amsterdam

FIGURE 7. The Amsterdam District Court's December 14, 2016 decision. Image: Maarten Sanders.

disputes in the event of changing borders of a national state, for example as a result of dissolution of a state or war.[67] With regard to the settlement of disputes the draft proposes: *"In case of disagreement, the States … are encouraged to bring their disputes before impartial arbitration or mediation commissions. The expert assistance of UNESCO is strongly recommended."*

In other words, a non-legalistic approach, as advocated in soft-law instruments for dispute resolution, is a road *not* taken in this case, as of yet.

And where, one might ask, does the 1954 Hague Convention and its Protocols fit in, given the fact that *that* Convention and its Protocols are specifically aimed at situations of armed conflict and occupation?[68] According to the First Protocol, States should take into custody cultural property from occupied territories for safe-keeping and until the situation has stabilized, and cultural property "shall never be retained as war reparations"; therefore, it should not be used as hostage in a conflict. Such principles would seem to fit the present dispute.

CONCLUSION

Undeterred by the pending appellate decision regarding the Crimean artifacts loaned to the AP Museum, the British Museum recently announced its plans to exhibit "Scythians: Warriors of Ancient Siberia" in September 2017. The materials intended for display in London, excavated from the Scythian tombs in Siberia and Kazakhstan, will be loaned primarily from the State Hermitage Museum in St Petersburg.[69]

Law students quickly learn that hard cases make for bad law. For the time being, the Russian Federation seems to have a firm hold on the Crimean peninsula. The viscerally satisfying solution may be to keep the Scythian gold that was lent to Amsterdam away from Russian control, although this result comes at the expense of severing the cultural-historical link between the objects and their place of origin (Crimea).

Archaeologists involved in ongoing excavations in Crimea and the study of the artifacts, however, have lamented the Amsterdam District Court's decision to return the Scythian artifacts to Kiev. The Russian Minister of Culture, too, denounced the ruling, observing that it "grossly violates the principles of international exchanges between museums and the right of the people of Crimea to

67 In the first Principle, the scope is defined as *"to provide general guidance for bilateral or multilateral interstate negotiations in order to facilitate the conclusion of agreements related to movable and immovable cultural property, following succession of States."* Under 1 (d) it clarifies to aim at situations like the present, being *"the property, which is situated in the territory to which the succession of States relates, or having originated from said territory, was displaced to a different location by the predecessor State."*

68 *[Hague] Convention for the Protection of Cultural Property in the Event of Armed Conflict,* First Protocol (ratified by The Netherlands, Ukraine as well as the Russian Federation), May 1954.

69 Press Release, "The British Museum Forthcoming Exhibitions 2017" [Spring 2017].

have access to their own cultural heritage."[70] If the December 2016 ruling is upheld by the appeal court, Ukraine will be entitled to receive the Crimean gold from the AP Museum. But, is this the right course of action? Should not the antagonism between politicians and the nationalism fueled by Russian and Ukrainian propaganda yield to higher ethical considerations?

According to the Code of Ethics of the International Council of Museums ("ICOM"), to which the Dutch, Ukrainian and Russian museums subscribe, museum collections worldwide are repositories and stewards of the public cultural heritage and, as such, "have a special position in law, which makes them protected by international legislation."[71] The outcome of the case in Amsterdam involving the Crimean loans as it now stands makes it unclear whether museum collections are indeed protected, and by what standards?

The treasures from Crimea have a permanent bond with the place where they were created, excavated and displayed, as do other treasures excavated from Crimea and now stored in the State Hermitage Museum (Russia) or elsewhere in the world. Whether it is a long-term loan, joint custody arrangement, or an exchange of property belonging to Ukraine but held in Russian museums, the authors of this article believe that some kind of fair "post-judicial resolution" is in order to allow the Crimean treasures to remain in the Crimean Museums.

Russia may have Crimea, but it can't have this ancient Scythian gold

By Andrew Roth December 14, 2016

FIGURE 8. Headline from Andrew Roth's article in *The Washington Post.*

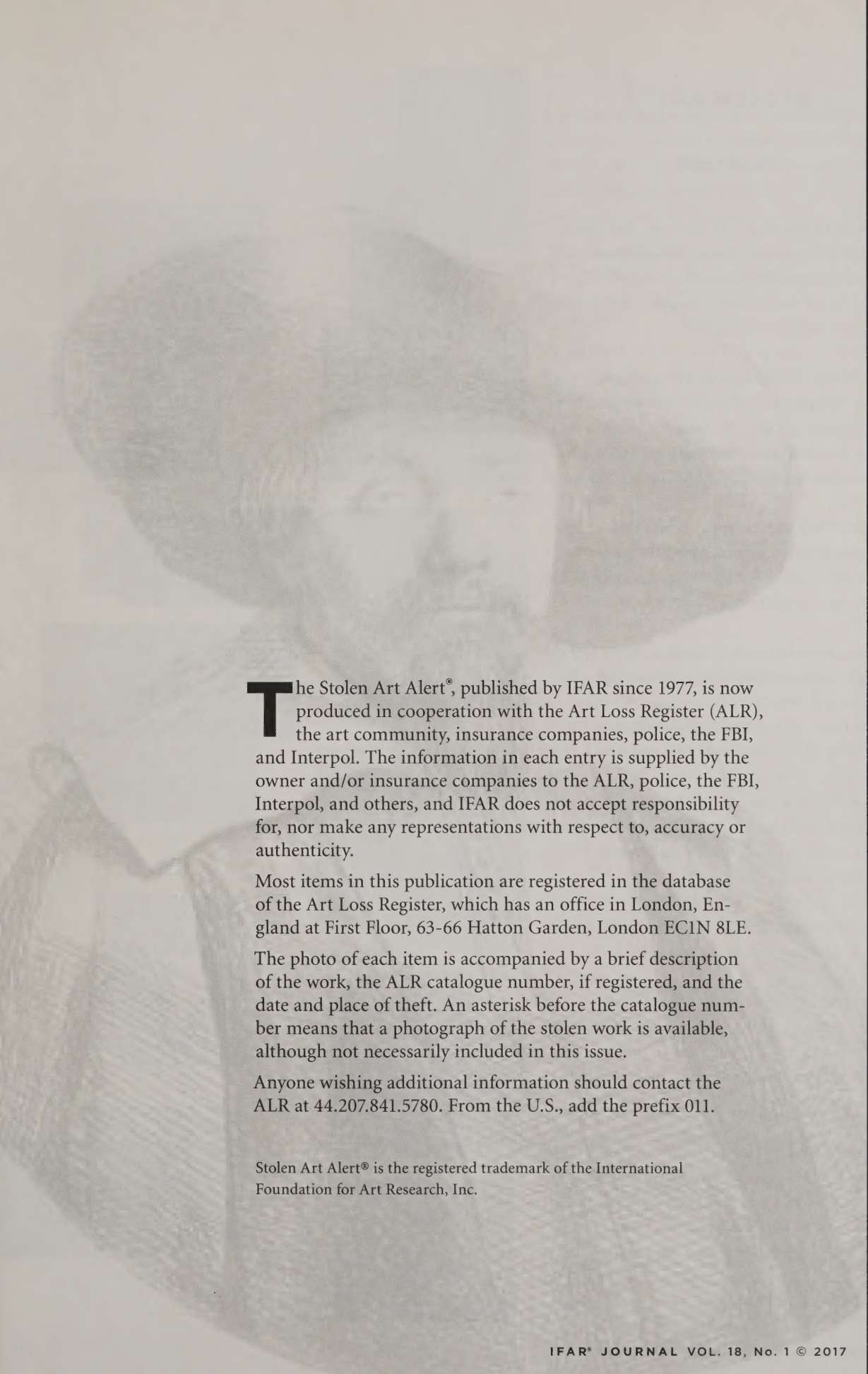
Despite the momentary gratification of headlines like, "Russia may have Crimea, but it can't have this ancient Scythian gold"[72] **(FIG. 8),** the 2016 December decision leaves many questions unanswered. Who is the true owner of the gold and cultural heritage at the heart of the Amsterdam dispute? Will Ukraine, if ultimately victorious, be able to reach a fair and just decision as to the final location of the artifacts—one untainted by the injustice and loss it has suffered over the course of its long and complicated history? Was the decision to go to court admirable or deplorable? Is this matter, *au fond,* a dispute that can be solved by adversarial court proceedings?

• • •

70 "Crimean gold must go back to Ukraine, says Dutch court," *BBC News Europe* (December 14, 2016), available at http://www.bbc.com/news/world-europe-38314491.

71 International Council of Museums, "The ICOM Code of Ethics for Museums" (2004).

72 Andrew Roth, *The Washington Post* (December 14, 2016).



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STOLEN ART*

PAINTINGS

1. **JOHN MCLAREN BARCLAY** (Scottish, 1811-1886). ***The Piper to the 2nd Marquess of Breadalbane,*** 1842. Oil on canvas. 83.82 x 55.88 cm (33″ x 22″). *L17.506. Stolen from a private residence in East Linton, Scotland on April 15, 2017.

1

2. **ZHANG BIAO** (Chinese, born 1971). ***Forging Towards "Shangri La," "Xanadu," or "Arcadia,"*** 2006. Oil painting. 210 x 330 cm (approx. 82 ¾″ x 30″). *L17.414. Stolen in transit between London, England and Lisbon, Portugal on September 1, 2011.

2

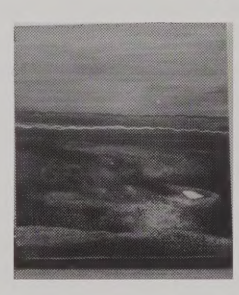
3. **HERBERT BRANDL** (Austrian, born 1959). ***Panorama,*** 2000. Oil on canvas, 165 x 600 cm (approx. 65″ x 236 ¼″). *L17.343. Stolen from a gallery in Tyrol, Austria on March 14, 2017.

3

4. **PAMELA JUNE (PJ) CROOK** (English, born 1945). ***Crowded Commuter Scene of People Reading Newspapers,*** c. 1990-2005. Oil on panel. *L17.370. Stolen in transit in London, England on January 1, 2005.

4

5. **PHILIP HUNTER** (Australian, 1958-2017). ***Summer Plains 3.*** Oil on canvas. 121.92 x 121.92 cm (48″ x 48″). *L17.229. Stolen in transit in New York City on November 23, 2015.



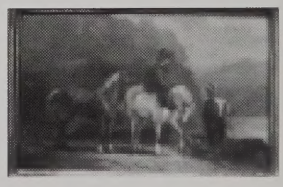
5

6. **ALEX KATZ** (American, born 1927). ***Box Flower 1,*** 2001. See color photo on inside back cover.

7. **JEAN MIOTTE** (French, 1926-2016). ***Abstract Lyrique Painting,*** 1989. Acrylic on canvas. 100 x 81 cm (approx. 39 ⅜″ x 32″). *L17.405. Stolen from a private residence in Saint-Paul-de-Vence, France on March 27, 2017. See item no. 66.

7

8. **PIETER FREDERIK VAN OS** (Dutch, 1808-1892). ***Untitled,*** 1881. Oil on panel. 11 x 18 cm (approx. 4 ¼″ x 7″). Inscribed on verso: Given by your uncle 1881. *L17.491. Stolen from an auction house in Huizen, The Netherlands on December 9, 2009.



8

*Numbering for the Volume 18 Cumulative Index of Stolen Art begins with this issue.

9

9. **JOSEPH WEINRIB** (American). ***Anxiety,*** 1954. Oil on canvas mounted on a panel. 78.74 x 58.42 cm (31″ x 23″). *L17.330. Stolen from a business in Asheville, NC on January 15, 2017.

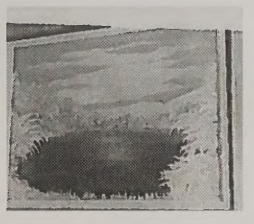
The following seven paintings were stolen from a private residence in Brussels, Belgium on March 2, 2017. *L17.493:

10

10. **CANALETTO, STUDIO OF** (Italian, 1697-1768). ***View of the Grand Canal in Venice.*** 53.01 x 88.01 cm (approx. 20 ¾″ x 34 ½″).

11

11. **GIORGIO DE CHIRICO** (Italian, 1888-1978). ***Horses by the Sea.*** Oil on canvas. 32.99 x 46 cm (approx. 13″ x 18 ⅛″).



12

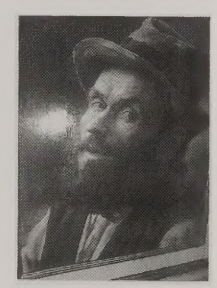
12. **WILLIEM DEGOUVE DE NUNCQUES** (Belgian, 1867-1935). ***Pond in Winter.*** Oil on canvas. 51 x 67.01 cm (approx 20″ x 23 ⅜″).

13

13. **PIETRO DELLA VECCHIA** (Italian, 1603-1678). ***Vanity of Life – Italy.*** Oil on panel.

14

14. **LUCAS VAN GASSEL** (Flemish, 1500-1569). ***Holy Family in a Vast Landscape.*** Oil on panel. 73.99 x 48.01 cm (approx. 29 ⅛″ x 19″).



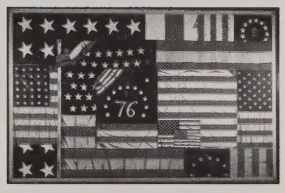
15

15. **JEF LEEMPOELS** (Belgian, 1867-1935). ***Head of a Man.*** Oil on canvas.

16. **ALFRED GEORGE STEVENS** (English, 1817-1875). ***Marine.*** Oil on panel. 32.99 x 34 cm (approx. 13″ x 13 ⅜″).

16

The following three paintings by **GARY THOMAS ERBE** (American, 1944) were stolen from a private residence in East Hampton, NY on November 13, 2016. *L17.127:

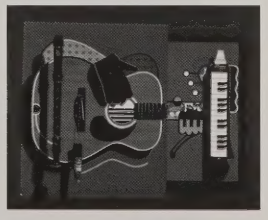


17

17. ***Composition in Red, White and Blue,*** 1975. Oil on canvas. 182.88 x 284.48 cm (72″ x 112″).

18

18. ***Fantasy in Pursuit,*** 1978. 187.96 x 162.56 cm (74″ x 64″).



19

19. ***Trio,*** 1985. oil on canvas. 76.2 x 93.98 cm (30" x 37″).

STOLEN ART (cont.)

The following two paintings by **PHILIP DAVID HAWKINS** (English, contemporary) were stolen from a business in Devon, England on July 1, 2015. *L17.74:

20

20. ***Heading West,*** 1987. Oil painting. 50.8 x 76.2 cm (20″ x 30″).

21

21. ***Sunshine and Steam,*** 1987. Oil painting. 50.8 x 76.2 cm (20″ x 30″).

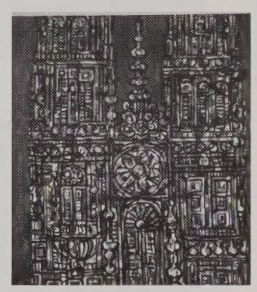
The following two paintings by **PALMER C. HAYDEN** (American, 1890-1973) were stolen from a warehouse in Landover, MD on September 21, 2016. *L17.495. See also item no. 55 below:

23

22. ***Chess Game,*** c. 1950. See color photo on inside back cover.

23. ***Pennsylvania Landscape,*** c. 1950. Oil on canvas. 66.04 x 86.36 cm (26″ x 34″).

The following two paintings by **RENE PORTOCARRERO** (Cuban, 1912-1985) were stolen from a private residence in Homestead, FL on April 16, 2017. *L17.504:



24

25

24. ***Cathedral Painting.*** Oil painting.

25. ***Cathedral Painting.*** Oil painting.

The following 16 paintings were stolen from a warehouse in Brampton, Ont, Canada on January 16, 2017. See also item no. 46 below. *L17.266 and *L17.350 :

26

27

26. **DAVID ALEXANDER** (Canadian, born 1947). ***Get on Shore Before Night,*** 2015. Acrylic on canvas. 144.78 x 167.64 cm (57″ x 66″).

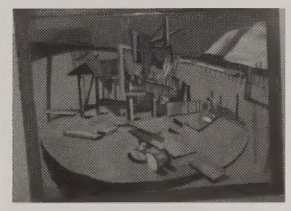
27. **DAVID ALEXANDER**. ***Quiet Logical Reflect,*** 2015. Acrylic on canvas. 144.78 x 167.64 cm (57″ x 66″).

28

28. **DAN P. BROWN** (Canadian, born 1939). ***Blondie and Gabe,*** 1992. Tempera painting. 76.2 x 111.76 cm (30″ x 44″).

29. **OSCAR LAKEMAN** (American, born 1949). ***Shoes #30,*** 1987. Acrylic on canvas. 121.92 x 152.4 cm (48″ x 60″).

30. **MEDRIC MACPHEE** (Canadian, born 1953). ***Command Central,*** 2006. Oil on canvas. 64 x 84 cm (approx. 25 ¼″ x 33″).



31. **MEDRIE MACPHEE.** ***Treasure Island,*** 2006. Oil on canvas. 162.56 x 213.36 cm (64″ x 84″).

32. **NICHOLAS MARAVELL** (American, contemporary). ***Red House,*** 1989. Oil on canvas. 73 x 35 cm (approx. 28 ¾″ x 13 ¾″).

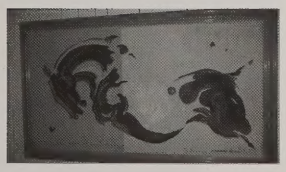
33. **JANET MUNRO** (American, born 1949). ***Boys Skating at Bayberry Farm,*** 1985. Acrylic on masonite. 60.96 x 101.6 cm (24″ x 40″).

34. **JANET MUNRO.** ***Fishing in the Spring,*** 1984. Acrylic painting. 76.2 x 121.92 cm (30″ x 48″).

35. **JOSEPH FRANCIS PLASKETT** (Canadian, 1918-2014). ***Birthday Bouquet 4.*** Oil on canvas. 99.82 x 64.77 cm (approx. 39 ¼″ x 25 ½″).

36. **JOSEPH FRANCIS PLASKETT** (Canadian, 1918-2014). ***Still Life with Parrot Tulips,*** 2008. Oil on canvas. 101.09 x 50.29 cm (approx. 39 ¾″ x 20″).

37. **WU TIEN-CHANG** (Taiwanese, born 1956). ***Spatial Dimensions of the Horse,*** 2014. Acrylic on canvas. 91.44 x 152.4 cm (30″ x 60″).



38. **WU TIEN-CHANG.** ***Torso of the Horse,*** 2014. Acrylic on canvas. 88.9 x 167.64 cm (35″ x 66″).

39. **KAMILA WOZNIAKOWSKA** (Polish/Canadian, born 1956). ***Deux Théoriciennes tenant d'appliquer la théorie sur la pratique de l'art actuellement en vigeur,*** 2003. Acrylic panel. 19.99x 40.49 cm (approx. 7 ¾″ x 16″). Part I of a triptych.

STOLEN ART (cont.)

40. KAMILA WOZNIAKOWSKA. ***Deux Théoriciennes tenant d'appliquer la théorie sur la pratique de l'art actuellement en vigeur,*** 2003. Acrylic panel. 68 x 90 cm (approx. 26 ¾″ x 35 ⅜″). Part III of a triptych.

40

41. KAMILA WOZNIAKOWSKA. ***Two International Experts Conducting Research,*** 1999. Acrylic on board. 113.03 x 163.83 cm (44 ½″ x 64 ½″).

41

42. BROR HJORT (Swedish, 1894-1968). ***Dancing Girls,*** 1922. Oil painting. 61 x 49 cm (approx. 24″ x 19 ¼″). *L17.277. Stolen from the Bror Hjort Museum in Uppsala, Sweden on February 13, 2017. See item nos. 61 and 62.

42

MINIATURES

43. **Unknown Artist**. ***Portraits of William Miskin and His Wife,*** c. 1840-50. Double-sided miniature. 10.49 x 5 cm (approx. 4 ⅛″ x 2″). *L17.518. Stolen from a private residence in London, England on April 18, 2017.

43

MIXED MEDIA

44. MARTHA BRAUN (American, contemporary). ***Undecidedly Different,*** 2017. Mixed media, acrylic paint and handmade paper on canvas. 59.9 x 48.01 cm (approx. 23 ⅝″ x 19″). *L17.505. Stolen in transit in Las Vegas, NV on March 20, 2017.

44

45. DAVID CHOE (American, born 1976). ***Barnstorming,*** 2008. Mixed media on panel. 49.99 x 30 cm (approx. 19 ¾″ x 11 ¾″). *L17.568. Stolen from a private residence in Surrey, England on September 1, 2016.

45

46. JANET MUNRO (American, born 1949). ***Red House in Winter,*** 1989. Mixed media on masonite. 76.2 x 91.44 cm (30″ x 36″). *L17.266. Stolen from a storage area in Brompton, Ont, Canada on January 16, 2017. See also item nos. 26-41 above.

46

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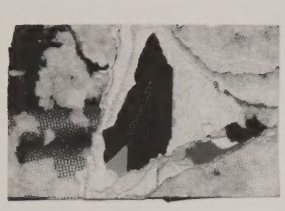
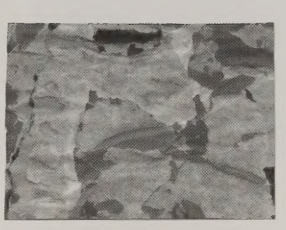
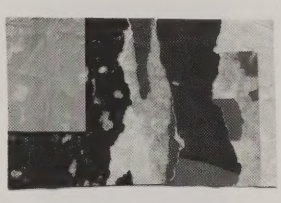
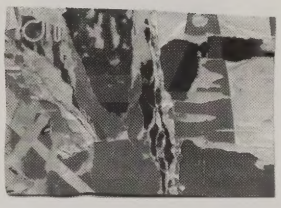
47 

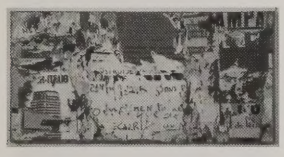
48 

49

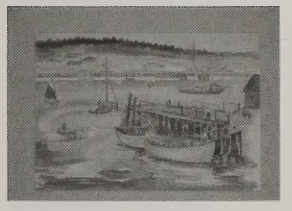
50 

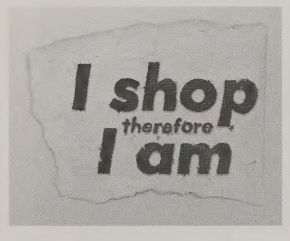
51

52 

53 

54

55 

56 

57

The following eight mixed media works by **JACQUES MAHÉ DE LA VILLEGLÉ** (French, born 1926), all made of ripped posters on cardboard, were stolen from a gallery in Paris, France on January 1, 2015. *L17.595. See item no. 77:

47. ***Beyond This Limit, January 1976.*** 8.51 x 12.8 cm (approx. 3 ⅜″ x 5″).

48. ***Fragment Boulevard de la Bastille, November 1960.*** 11.99 x 16 cm (approx. 4 ¾″ x 6 ¼″).

49. ***Lille, January 2000.*** 11.3 x 8.69 cm (approx. 4 ½″ x 3 ⅜″).

50. ***Rue d'Alésia, February 1965.*** 9.3 x 4.6 cm (approx. 3 ¾″ x 1 ¾″).

51. ***Rue du Moulin-au-Beurre, (14th), November 1970).*** 81 x 65 cm (approx. 31 ¾″ x 25 ½″).

52. ***Rue Saint-Martin, July 1981.*** 10.01 x 14 cm (approx. 4″ x 5 ½″).

53. ***61, rue au Maire, March 11, 1973.*** 77.01 x 157 cm (approx. 30 ¼″ x 61 ¾″).

54. ***Transparency of the Gare de l'Est Station, January 1988.*** 13.69 x 9.8 cm (approx. 5 ⅜″ x 3 ¾″).

WORKS ON PAPER

55. **PALMER C. HAYDEN** (American, 1890-1973). ***Excursion,*** 1958. Watercolor on paper. 30.48 x 43.18 cm (12″ x 17″). *L17.495. Stolen from a warehouse in Landover, MD on September 21, 2016. See also item nos. 22 and 23 above.

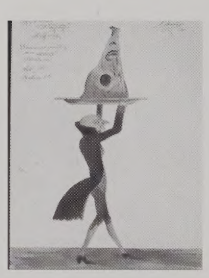
56. **MICHAEL LANDY** (English, born 1963). ***I Shop Therefore I Am,*** 2016. Oil stick on paper. 11.3 x 14.3 cm (approx. 4 ½″ x 5 ⅝″). *L17.560. Stolen at Art Basel Hong Kong in March 2017.

57. **LEONARDO DA VINCI** (Italian, 1452-1519). ***Design for Trinnilzio Monument,*** 1509. Drawing on paper. 70 x 68 cm (approx. 27 ½″ x 26 ¾″). The drawing includes a card signed by Sir Joseph Duveen, authenticating it and referencing Bernard Berenson, who had noted that the monument was to commemorate the Battle of Anghiari. *L17.391. Stolen from a private residence in Egg Harbor Township, NJ on August 8, 2013.

STOLEN ART (cont.)

The following three works on paper by **MIKHAIL CHEMIAKIN** (Russian, born 1943) were stolen from an exhibition space in Paris, France on January 16, 2017. *L17.365:

58. ***Nutcracker Sketch: Drosselmeyer Departs,*** 2000. Ink and watercolor on paper. 30.51 x 22.81 cm (approx. 12 ¼″ x 9″). Inscribed in pencil on the verso: Archive number 3760.



58

59. ***Nutcracker Sketch: The Kitchen,*** 1999. Ink and watercolor on paper 35.61 x 50.8 cm (approx. 14″ x 20″). Sigend l/l. Inscribed in pencil on the verso: Archive number 3324.

60

59

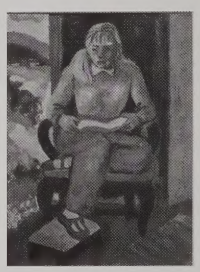
60. ***Nutcracker Sketch: Snowflake,*** 2000. Colored pencil on black paper. 35 x 25 cm (approx. 13 ¾″ x 9 ¾″). Signed l/r. Inscribed in pencil on the verso: Archive number 3811.

The following two works on paper by **BROR HJORT** (Swedish, 1894-1968) were stolen from the Bror Hjort Museum in Uppsala, Sweden on February 13, 2017. *L17.277. See item no. 42.

61. ***Margareta Dressed,*** 1952. Watercolor and gouache on paper. 29.01 x 22 cm (approx 11 ⅜″ x 8 ½″.

62. ***Margareta Naked,*** 1951. Watercolor and gouache on paper. 32 x 24 cm (approx 12 ⅕″ x 9 ½″.

62

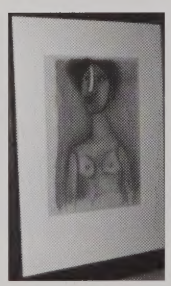


61

The following two works on paper by **GIULIO SALVADORI** (Italian, 1918-1999) were stolen from a warehouse in Brompton, Ont., Canada on January 16, 2017. *L17.350. See item no. 74:

63. ***Nude,*** 1981. Oil and gouache on paper. 114.3 x 96.52 cm (45″ x 38″).

64. ***Nude,*** 1981. Oil and gouache on paper. 116.84 x 91.44 cm (46″ x 36″).

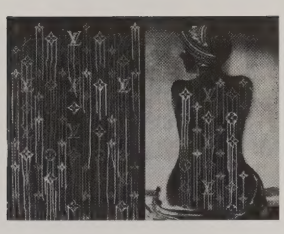


64

63

PRINTS, LITHOGRAPHS, ETCHINGS

65. **ANDY WARHOL** (American, 1928-1987). ***Blackglama,*** 1985. See color photo on inside back cover.



66

66. **ZEVS (CHRISTOPHER AGHIRRE SCHWARZ)** (French, born 1977). ***Liquidated Louis Vuitton Murakami Multico-Performs at Cabaret Voltaire,*** 2011. Liquitex and UV print on canvas. 89 x 61 cm (approx. 35″ x 24″). *L17.405. Stolen from a private residence in Saint-Paul-de-Vence, France on March 27, 2017. See item no. 7.

The following seven etchings by **REMBRANDT** (Dutch, 1606-1669) **AND SCHOOL OF REMBRANDT** were stolen from an auction house in Stuttgart, Germany on February 22, 2017. *L17.530:

67. ***The Beggar with the Stilts Foot,*** c. 1630. See photo on inside back cover.

68. ***The Blind Tobias,*** 1651. See photo on inside back cover.

69. ***The Holy Family,*** 1632. 9.4 x 7 cm (approx. 3 ¾″ x 2 ¾″). B. 62, New Hollstein 114, 1 (of I). The collection stamp on the verso reads: Furstl. Waldburg Wolfegg's Kupferstichkabinett (Lugt 2542).

69

70. ***A Man with a Short Beard and Embroidered Cloak,*** 1631. 14.1 x 12.2 cm (approx. 5 ½″ x 4 ¾″). B. 263, New Hollstein 85, 5 (of V). The collection stamp on the verso reads: Furstl. Waldburg Wolfegg's Kupferstichkabinett (Lugt 2542).

70

71. ***Samuel Manasseh Ben Israel,*** 1636. 13.6 x 10.6 cm (approx. 5 ¼″ x 4 ¼″). B. 269, New Hollstein 156, probably 4 (of V). The collection stamp on the verso reads: Furstl. Waldburg Wolfegg's Kupferstichkabinett (Lugt 2542).

71

72. ***The Stoning of St. Stephen,*** 1635. 9.5 x 8.4 cm (approx. 3 ¾″ x 3 ⅜″). B. 97, New Hollstein 140, probably 1 (of IV). The collection stamp on the verso reads: Furstl. Waldburg Wolfegg's Kupferstichkabinett (Lugt 2542).

72

73. School of Rembrandt. ***Study for the Great Jewish Bride.*** 12.1 x 9.7 cm (approx. 4 ¾″ x 3 ¾″). B. 341, New Hollstein 154, copy a, Bl Rej. 70, Seldlitz 341. 2 (of II). Attributed to Ferdinand Bol. The collection stamp on the verso reads: Furstl. Waldburg Wolfegg's Kupferstichkabinett (Lugt 2542).

73

STOLEN ART (cont.)

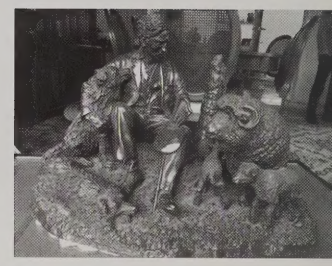
PHOTOGRAPHS

74. **STEPHAN REUSSE** (German, born 1954). ***Sister 2,*** 2006. Thermal photo; C-print on Diasec. 90.17 x 119.38 cm (35 ½″ x 47″). *L17.350. Stolen from a warehouse in Brompton, Ont., Canada on January 16, 2017.

74

SCULPTURE

75. **W. ELPHICK** (English). ***Figurine,*** c. 1980. Pewter. 5 x 5.99 x 5.99 cm (approx. 2″ x 2 ¼″ x 2 ¼″). Inscribed on the front: W. Elphick 1980. *L17.291. Stolen from a private residence in Emneth, Cambridgeshire, England on February 26, 2017.



75

76. **ARMAN FERNANDEZ** (French/American, 1928-2005). ***La Venus Musicale.*** Bronze. 43.51 x 19.99 x 13 cm (approx. 17 ⅛″ x 7 ¾″ x 5 ⅛″). *L17.409. Stolen from a private residence in Saint-Paul-de-Vence, France on September 10, 2013.

76

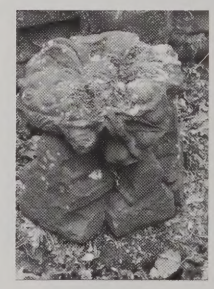
77. **JACQUES MAHÉ DE LA VILLEGLÉ** (French, born 1926). ***Sons of Steel – Chausée des Corsaires (Sainte-Malo), August 1947.*** Steel and wood. 62.99 x 46.99 cm (approx. 24 ¾″ x 18 ½″). Ed. no. ⅝ + 4 AP. *L17.595. Stolen from a gallery in Paris, France on January 1, 2015. See item nos. 47-54.

77

78. **Unknown Artist** (16th century). ***Apollo.*** Marble. 67.01 x 58.01 x 38.99 cm (approx. 26 ⅜″ x 22 ¾″ x 15 ⅜″). *L17.475. Stolen from a stables/events venue in Crieff, England on April 6, 2017.

78

79. **Unknown Artist** (Scottish, 15th century). ***Passion Stones*** (medieval vaulting bosses). Part of the Scottish national heritage. 45 x 65 cm (approx. 17 ¾″ x 25 ½″). *L17.403. Stolen from hospital grounds in Edinburg, Scotland on March 8, 2017.



79

80. **Unknown Artist**. ***Rider with Two Horses*** (15th century). Brass. 16 x 12 x 6.7 cm (approx. 6 ¼″ x 4 ¾″ x 2 ½″). *L17.137. Stolen from a gallery in London, England on November 30, 2016.

80

82

81

The following two sculptures by **ROSS RUDEL** (American, born 1960) were stolen from a private residence in Los Angeles, CA on March 8, 2017. *L17.401:

81. ***Brain,*** 2003. Wood. 77.47 x 12.7 x 26.67 cm (30 ½″ x 5″ x 10 ½″).

82. ***Heart,*** 2003. Wood on an acrylic base. 91.44 x 11.43 x 17.78 cm (36″ x 4 ½″ x 7″).

ASIAN ART

83

83. **Unknown Artist**. ***Cockerel with a Detachable Tail*** (Chinese, Qianlang period, 8th century). Metal with cloisonné enamel. The bird has a detachable tail and a number, in yellow, on the foot: 49.445.29. 17.2 x 13x 7 cm (approx. 6 ¾″ x 5 ⅛″ x 2 ¾″). *L17.261. Stolen from a mansion house in Fife, Scotland on October 1, 2014.

84

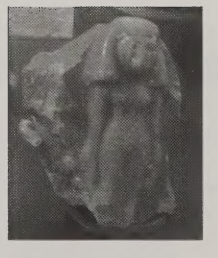
84. **Unknown Artist** (Dayak, 20th century). ***Lidded Bowl.*** Wood. 24.99 x 15.01 x 15.101 cm (approx. 10″ x 6″ x 6″). *L17.420. Stolen from a private residence in Berkeley, CA on February 1, 2017. See item no. 91.

ANTIQUITIES

The following 5 items were stolen from the Byblos site museum in Lebanon on March 18, 2013. *L17.599:

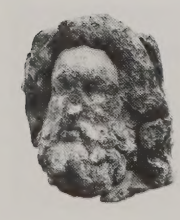
85

85. **Unknown Artist.** ***Egyptian Statuette,*** 1184 BC. Architectural fragment relief with a hieroglyphic inscription on the back pillar naming Pharaoh Ramses III (1198-1166 BC). Amphibole. 16 x 10.49 x 8 cm (approx. 6 ⅓″ x 4 ⅛″ x 3 ⅛″). DGA inventory no. 18943.



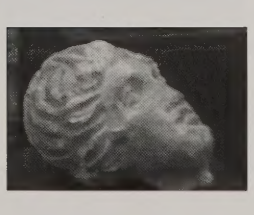
86

86. **Unknown Artist** (Bronze Age, 3200-1200 BC). ***Architectural Relief Fragment.*** Basalt. 10.01 x 8.51 x 2.49 cm (approx. 4″ x 3 ⅜″ x 1″). DGA inventory no. 21591.



87

87. **Unknown Artist** (Roman Period, 1st-2nd centuries AD). ***Fragment Relief Head of the God Serapis.*** Marble. 21.01 x 16.99 x≠ 14.6 cm (approx. 8 ¼″ x 6 ¾″ x 5 ¾″). DGA inventory no. 19845.



88

88. **Unknown Artist** (Roman Period, 1st-2nd centuries AD). ***Head of a Man.*** Marble. DGA inventory no. 23942.

STOLEN ART (cont.)

89. **Unknown Artist** (Roman Period, 1st century AD). ***Head of a Young Man***. See photo on inside back cover.

EGYPTIAN ANTIQUITIES

90. **Unknown Artist**. (Egyptian, Ptolemaic Period, 200-100 BC). ***Recumbent Lion.*** See photo on inside back cover.

PRE-COLUMBIAN ANTIQUITIES

91. **Unknown Artist** (Mayan Classic Period, 450-750 AD). ***Heart Bowl.*** Depicts a skeleton bending in a backwards position.Used to hold the heart of a victim of human sacrifice. Limestone. 28.56 or .58? x 21.59 x 19.05 cm (approx. 11 ¼″ x 8 ½″ x 7 ½″). *L17.420. Stolen from a private residence in Berkeley, CA on February 1, 2017. See item no. 84.

91

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MISSING ART

PAINTINGS

The following two paintings by **ROBERT COMBAS** (French, born 1957) were missing from a private residence in Geneva, Switzerland on November 25, 2016. *L17.113:

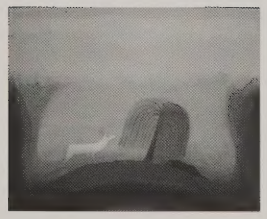
1

1. ***God is going to party the ass-ass-clan through the Pope-King-Mage-Cheese 15,*** 1992. Oil on canvas. 27 x 16.99 cm (approx. 10 ½″ x 6 ¾″). Signed and dated on the edge of the canvas. The label on the verso reads: Gallery Yvon Lambert, Paris "ROBERT COMBAS/God is going to party to the asses clan ass/ by the pope Roimage Cheese XV to/4: Pope King gets errors men/The eyes of the forest matte serious/with woman's gaze and the asses clan of the /triangular soaps are afraid of the judgment/last because they have just learned that god/is black and that his Son c'est Martin Luther/King./Painting on canvas/1992/ 27 x 17 cm."

2

2. ***Lady Godiva,*** 1992. Oil on canvas. 19 x 27 cm (approx. 7 ½″ x 10 ⅝″). Signed and dated on the edge of the canvas. The label on the verso reads: Galerie Yvon Lambert, Paris "ROBERT COMBAS/Lady Godiva:/Elle fait l'amazone. Elle est condamné elle a/ fait l'adultère, elle est condamné à se mon-/trer nu sur le cheval blanc d'Ugue AuFrais./Quand elle passe devant les hommes aucun ne la/regarde, ils sont initiés donc vaccinés. Mais/certains ont transgressé la loi divine. Ils ont / des chibres gros comme des foutres./ Peinture sur toile/1992/19 x 27 cm."

MIXED MEDIA



3

3. **DOUG KENT** (American, contemporary). ***Weary at the Willow,*** 2005. Mixed media painting on canvas. 40.64 x 50.8 cm (16″ x 20″).*L17.497. Missing in transit in New York City on June 26, 2008.

*Numbering for the Volume 18 Cumulative Index of Missing Art begins with this issue.

RECOVERED ART

PAINTINGS

1. **SIMON DE VLIEGER** (Dutch, 1601-1653). ***Stormy Sea with Ships.*** Oil on panel. 50.19 x 66.4 cm (approx. 19 ¾″ x 26 ⅛″). *W02.4. Looted in Poland during WWII.

1

2. **NORMAN ROCKWELL** (American, 1894-1978). ***Boy Asleep with Hoe (also known as Taking a Break or Lazybones).*** Oil on canvas. 72.39 x 63.5 cm (approx. 28 ½″ x 25″). The painting appeared on the cover of *The Saturday Evening Post* on September 6, 1919. *L12.117. Stolen from a private residence in Cherry Hill, NJ in 1976. (See *IFAR Journal,* Vol. 13, nos. 1&2, no. 43). Recovered by the FBI and returned to the original owners on March 31, 2017.

2

WORKS ON PAPER

3. **WILLIAM CONOR** (Irish, 1881-1968). ***Bringing in the Turf.*** Crayon and pastel on paper. 37.5 x 47.5 cm (approx. 14 ¾¾″ x 18 ¾″). Stolen from a private residence in Belfast, Northern Ireland in 2008. Recovered in Dublin in June 2017 with the help of Art Recovery International.

3

SCULPTURE

4. **HARRIET W. FRISHMUTH** (American, 1880-1980). ***Joy of the Waters,*** 1917. Bronze. Ht: 156.21 cm (61 ½″). *L17.215. Recovered with the help of the ALR in February 2017.

4

5. **Unknown Artist**. ***Recumbent Greyhound.*** Bronze on a gray-green marble base. *L12.817. Stolen from a private residence in Gloucestershire, England in August 2012. Recovered with the help of the ALR in February 2017.

5

SILVER

6. **ROBERT ARMSTRONG OF KINSALE** (Irish, 18th century). ***Bowl,*** c. 1750. Silver. Diam: 175 mm (approx 7″). Stamped on the bottom: "RA, "R," "G," and "I." *L15.1299. Stolen from a private residence in Berlin, Germany in June 2015. Recovered with the help of the ALR in November 2016.

6

*Numbering for the Volume 18 Cumulative Index of Recovered Art begins with this issue.

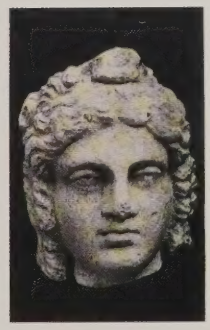
6

22

65

67

68



89

90

STOLEN ART

PAINTINGS

6. ALEX KATZ (American, born 1927). ***Box Flower 1,*** 2001. Oil on board. 22.9 x 30.5 cm (9″ x 12″). *L17.242. Stolen from a gallery in Munich, Germany on February 22, 2017.

22. PALMER C. HAYDEN (American, 1890-1973). ***Chess Game,*** c. 1950. Oil on canvas. 29.21 x 43.18 cm (11 ½″ x 17″). *L17.495. Stolen from a warehouse in Landover, MD on September 21, 2016. See also item nos. 23 and 55 inside.

PRINTS, LITHOGRAPHS, ETCHINGS

65. ANDY WARHOL (American, 1928-1987). ***Blackglama,*** 1985. Unique screenprint showing Judy Garland. 96.52 x 96.52 cm (38″ x 38″). *L17.217. Stolen in transit from Boston to Atlanta on August 20, 2016.

The following two etchings by **REMBRANDT** (Dutch, 1606-1669) and **SCHOOL of REMBRANDT** were among seven stolen from an auction house in Stuttgart, Germany on February 22, 2017. See also item nos. 69–73 inside. *L17.530:

67. *The Beggar with the Stilts Foot,* c. 1630. 10.57 x 6.6 cm (approx. 4 ¼″ x 2 ⅕″). B. 179, New Hollstein 49, probably 2 (of IV). The collection stamp on the verso reads: Furstl. Waldburg Wolfegg's Kupferstichkabinett (Lugt 2542).

68. *The Blind Tobias,* 1651. 16.1. x 12.9 cm (approx. 6 ⅜″ x 5″). B. 42, New Hollstein 265, probably 1 (of II). The collection stamp on the verso reads: Furstl. Waldburg Wolfegg's Kupferstichkabinett (Lugt 2542).

ANTIQUITIES

89. Unknown Artist (Roman Period, 1st century AD). ***Head of a Young Man.*** Marble. 10.8 x 7.49 x 8 cm (approx. 4 ¼″ x 3″ x 3 ⅛″). DGA inventory no. 18885. *L17.599. One of five items stolen from the Byblos site museum in Lebanon on March 18, 2013. See also item nos. 85-88 inside.

90. Unknown Artist. (Egyptian, Ptolemaic Period, 200-100 BC). ***Recumbent Lion.*** Bronze mounted on an ebony base. 15.49 x 32 cm (approx. 6″ x 12 ⅕″). Bibliography: Émile Chassinat, *Les Antiquités égyptiennes de la collections Fouquet*, Paris 1922, pl. V, p. 7, no. 3. *W17.22. Confiscated by the Nazis from storage in Paris, France on February 23, 1941.

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